

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THE WOLK LAW FIRM a/k/a ARTHUR
ALAN WOLK ASSOCIATES
1710-12 Locust Street
Philadelphia, PA 19103

Plaintiff,

v.

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION
SAFETY BOARD
490 L'Enfant Plaza, SW
Washington, DC 20594

Defendant.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE RELIEF

THE PARTIES

1. Plaintiff The Wolk Law Firm a/k/a Arthur Alan Wolk Associates, is a law firm, an S-Corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 1710-12 Locust Street, Philadelphia, Pennsylvania and is the issuer of requests to the United States of America, National Transportation Safety Board (“NTSB”) pursuant to the Freedom of Information Act (“FOIA”) and 49 C.F.R. §837, *et seq.* on behalf of aircraft accident victims and their families.

2. Defendant The United States of America, National Transportation Safety Board (“NTSB”) is a governmental entity organized and existing pursuant to Title 49 of the United States Code and is charged with investigating civil aircraft accidents pursuant to 49 U.S.C. § 1132.

3. The NTSB invites manufacturers (potential or actual defendants) to become actively involved in its NTSB investigations as “party participants”, although accident victims and their families are prohibited from participating, and the NTSB systematically withholds critical evidence and documents past the statute of limitations, causing irreparable harm.

4. In each of the accidents at issue in this action, the NTSB obstructed Plaintiff’s ability to inspect the aircraft wreckage, videos of the accident, photographs, documents, and other critical information and evidence, while manufacturers have access to it all and participate in the drafting of the NTSB report.

5. The NTSB has systematically obstructed accident victims from accessing information about their accident, and Plaintiff has had to file suit for wreckage and information for 7 other accidents in the related matter, *The Wolk Law Firm v. United States of America*, No. 2-16-cv-005632-001, which is pending in this Court before the Honorable Eduardo C. Robreno.

6. Plaintiff also had to file suit against the NTSB for withholding information and evidence related to four other accidents in the case, *The Wolk Law Firm v. United States of America*, No. 2:14-cv-05184-CMR (E.D. Pa. 2014).

JURISDICTION AND VENUE

7. This Honorable Court has jurisdiction over this civil action arising under the Constitution, laws, or treaties of the United States and the various agencies thereof including the NTSB pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

8. The United States District Court for the Eastern District of Pennsylvania is the appropriate venue pursuant to 5 U.S.C. § 552(a)(4)(B), 18 U.S.C. § 1391(e)(1), and 28 U.S.C. § 1402(b) in that Plaintiff The Wolk Law Firm is a resident of that district, and issued requests on behalf of accident victims in this venue.

NATURE OF THE ACTION

9. This is a civil action brought against the NTSB pursuant to claims of obstruction of justice and violations of due process, as well as statutory violations of 49 C.F.R. § 837, and the Freedom of Information Act, 5 U.S.C. §552. Plaintiff seeks to enjoin the NTSB to retrieve, review and release documents and evidence which Plaintiff requested from the NTSB, which are within its possession, custody and/or control.

BACKGROUND OF THE NTSB INVESTIGATION PROCESS

10. The NTSB is charged with the investigation of civil aviation accidents pursuant to 49 U.S.C. § 1132.

11. The NTSB, according to its own regulation, 49 C.F.R. § 830.10(b), takes custody of aircraft wreckage and other evidence, including photographic evidence, videos, notes, witness statements, and other information after an accident.

12. The NTSB is charged to perform any inspection, examination, or test promptly, and to shall make the results available. 49 U.S.C. § 1134(e).

13. Victims of aviation crashes and their agents, are not permitted to view, preserve, collect or otherwise document the accident site, the wreckage, or any other evidence pursuant to NTSB regulation 49 C.F.R. § 831.12.

14. The NTSB, during its investigation of airplane crashes and pursuant to its own regulation, 49 C.F.R. § 831.11, relies principally upon the manufacturers of civil aircraft and aircraft components to provide the required technical expertise to complete the required investigation.

15. These manufacturers who are actively involved in the investigation process that is unknown to accident victims and their families, are frequently involved in litigation arising out

of the accidents it investigates and are called upon by the NTSB for guidance, allowing them to manipulate the process to gain an advantage in any potential future litigation.

16. The NTSB's reliance upon manufacturers of civil aircraft and aircraft components creates a conflict of interest where the manufacturers are tasked with providing the technical expertise for the investigation of failures in their own products.

17. The NTSB's reliance upon manufacturers of civil aircraft and aircraft components creates a situation where manufacturers are afforded early and exclusive access to crash evidence while victims of aviation crashes are wholly excluded from the investigation process as well as evidentiary collection and preservation efforts.

18. The NTSB affords manufacturers and their representatives editing and/or approval power over the NTSB's "factual" reports.

19. The NTSB affords manufacturers and their representatives' control over the disposition of evidence, including power and authority over the time and disposition of the release of critical evidence to crash victims.

20. This allows evidence to be altered or removed outside the victim's families and representatives view, and prejudices their own investigation of accidents

21. The conflict of interest and collusion that is inherent in the so-called "party system" employed by the NTSB has been well documented in litigation and publications including, but not limited to, an independent study of NTSB processes conducted by the Rand Corporation entitled "Safety in the Skies" and was discussed in a six-part article in the newspaper "USA TODAY" on June 18, 2014 entitled "Unfit for Flight."

22. Various statutes of limitation in the several states bar crash victims' claims against aircraft and component manufacturers and other putative defendants after the expiration of certain time periods.

23. The NTSB does not release documents or evidence for investigation by crash victims unless and until the manufacturers, who are putative or actual defendants, have authorized such a release.

24. The NTSB has withheld critical information, including accident wreckage, videos of the flight, flight performance data, photographs of the investigation, correspondence with the manufacturers, and other documents which are available to the manufacturers, but not to the victims up to, or even past the statute of limitations.

25. The NTSB's course of conduct that prevents Plaintiff from obtaining material information and evidence persists even though the NTSB has no reason to retain the material information and/or evidence other than to thwart Plaintiff's own investigations and to obstruct litigation against liable parties.

26. Plaintiff brings this action on behalf of accident victims and their families, who have been prevented access to wreckage, critical documents, data and evidence of plane crashes that have resulted in severe injury or the death, and the NTSB has continually denied them access to any remedy.

FOIA REQUESTS AT ISSUE

27. Plaintiff is routinely retained to investigate aircraft accident investigations, and to pursue legal remedies for its clients.

28. In furtherance of these investigations, the Wolk Law Firm issues requests pursuant to 49 U.S.C. § 837 and 5 U.S.C. § 552, as the NTSB has information which is not available elsewhere, since accident victims are prevented from being participants.

29. Several of these requests have been subject to unreasonable delay and unilateral extensions of time which the NTSB grants itself, which injures the Wolk Law Firm and their clients' abilities to prosecute cases.

**Estate of Berke Morgan Bates
Estate of Henry John Cullen, III
NTSB Accident Investigation No. ERA17FA274
FOIA Request No. 2019-00131**

30. On August 12, 2017, Berke Morgan Bates and Henry John Cullen, III were fatally injured in an accident involving a Bell 407 aircraft, FAA Registration N31VA, in Charlottesville, Virginia.

31. The NTSB investigated this accident and assigned it Accident No. ERA17FA274.

32. Plaintiff has been retained by the families of two Virginia State Troopers who were fatally injured in this accident.

33. The two-year Statute of Limitations expires on August 12, 2019.

34. The accident flight was recorded by video on behalf of the University of Virginia, who has possession of the video.

35. Furthermore, the Virginia State Police have conducted a separate investigation of this accident.

36. As part of Plaintiff's investigation, Plaintiff requested access to the helicopter wreckage and video of the accident flight to allow for Plaintiff, and other interested parties, to inspect the wreckage in sufficient time to meet the August 12, 2019 Statute of Limitations.

37. Plaintiff requested the videos and reports from the Virginia State Police, who was willing to allow Plaintiff to view them.

38. On March 19, 2019, Plaintiff was advised that General Counsel for the NTSB forbid the Virginia State Police to disseminate the videos, or any other investigation materials.

39. Plaintiff also requested to inspect the accident wreckage.

40. Plaintiff's request was denied because the NTSB claims it will need the wreckage for an additional 90 to 120 days, near the expiration of the Statute of Limitations.

41. The NTSB's obstruction in prohibiting Plaintiff to view and analyze the video of the accident flight, investigation materials and access to the wreckage, serves no reasonable purpose other than to protect the manufacturers/party participants from litigation by hiding information from the families until close to, or after, the expiration of the Statute of Limitations.

42. On March 4, 2019, Plaintiff advised General Counsel for the NTSB that the 90 to 120 day window was not acceptable, and would prejudice its clients' claims by withholding the accident wreckage until the eve of the August 12, 2019 Statute of Limitations. (Ex. A at pgs. A.1-7).

43. Through this same letter, Plaintiff submitted a request to the General Counsel for the wreckage to the NTSB, along with an affidavit pursuant to 49 U.S.C. § 837, *et seq.* (Ex. A at pgs. A.3-4).

44. The affidavit conformed with the request requirements contained within 49 C.F.R. Part 837, and stated as follows:

a. The NTSB has not released the wreckage.

b. Evaluation of the wreckage is necessary to assess and identify who is potentially responsible or interested parties, and assess any operation trends of the aircraft which explains the loss of power in this accident.

c. Evaluation of video surveillance is necessary to actually see how this accident occurred, the movements the aircraft made in the airspace, and how it impacted the ground.

d. This information is all appropriate material to be evaluated and endorsed by the methodologies of entities such as International Civil Aviation Organization accident investigation manual and the NTSB itself.

e. The NTSB's failure to release this material has prejudiced the investigation of this accident on behalf of the families and any additional delay will prejudice the investigation further.

f. While the NTSB is not subject to the time constraints for filing a lawsuit imposed by state legislation, the families of the victims of this accident are.

g. The evaluation of aircraft wreckage is a time-consuming process, interested parties must be identified, given notice of inspection, given the ability to attend, and all of this must be completed in time before the filing of a lawsuit.

h. Pursuant to Plaintiff's office's ethical obligations set forth in the Pennsylvania Rules of Professional Conduct, Plaintiff's office is charged with an investigation of the facts of this accident in the course of representation of our clients.

i. Other victims of accidents have brought lawsuit against the NTSB for, among other things, failing to provide access to information and material necessary for

evaluation for the preparation of lawsuit. *The Wolk Law Firm, et al. v. United States of American National Transportation Safety Board*, No. 2:14-cv-05184-CMR (E.D.PA.).

j. Furthermore, the party participants to NTSB's investigation, including this one, are potentially responsible for the accident, are on notice of the families' involvement in assessing the viability of a lawsuit, and are in a position to influence the government investigation and its progress.

k. The inexplicable delays in this matter, the appearance of impropriety owed to the involvement of potentially responsible entities involved in the government's investigation of this accident, and the NTSB's delays in releasing evidence the evaluation of which is necessary to protect the rights of victims justifies immediate attention to this demand and the immediate release of the wreckage.

l. Because the conclusions of the NTSB are not admissible under federal statutory and regulatory law, 49 U.S.C. §1154(b); 49 C.F.R. §835.2 as well as the involvement of potentially responsible parties in the NTSB's investigation, waiting for the results of the NTSB's investigation is meaningless and will not ameliorate the prejudice.

m. Pursuant to 49 C.F.R. Part 837, *et seq.*, the wreckage and any other material that was aboard the aircraft or created before the accident that concerns the aircraft should be immediately released so that the parties may timely inspect these components and materials.

(Ex A at pgs. 3-4).

45. The Wolk Law Firm will supply the NTSB with any photographs or videos of such examination.

46. On March 14, 2019, the NTSB denied Plaintiff's request under 49 U.S.C. § 837, and stated that the investigation is ongoing. (Ex. A at pg. 8).

**Estate of Christopher Freeman Byrd
Estate of Phillip Armstrong Byrd
Estate of Grady G. Byrd, III
NTSB Accident Investigation No. ERA15FA208
FOIA Request No. 2016-00438 (Appeal No. 2017-00018-A)**

47. On May 8, 2015, Christopher Byrd, Phillip Byrd, and Grady G. Byrd, III ("Greg Byrd") were fatally injured in an accident involving a Piper PA-32-R-300 aircraft, FAA Registration N5802V, in Atlanta, Georgia.

48. The NTSB investigated this accident and assigned it Accident No. ERA15FA208.

49. On September 29, 2016, the Wolk Law Firm issued FOIA Request No. 2016-00438 ("438 Request") to the NTSB seeking documents, evidence and data related to the NTSB's investigation of the accident which resulted in the deaths of Christopher Byrd, Phillip Byrd and Greg Byrd. It was acknowledged the same day. (Ex. B at pgs. B.1-3).

50. No response was received within the time required under FOIA, so Plaintiff submitted an appeal on January 19, 2017, of which the NTSB acknowledged receipt on April 21, 2017. (Ex. B at pgs. B.4-13).

51. On August 2, 2017, the NTSB provided a status update on the 438 Request as "Closed," although no response to Plaintiff's appeal was ever provided. (Ex. B at pg. B.14).

52. Plaintiff has exhausted its administrative remedies.

**Estate of Lauren Johnson Chase
NTSB Accident Investigation No. ERA16LA078
FOIA Request No. 2017-00048 (Appeal No. 2017-00015-A)**

53. On December 24, 2015, Lauren Johnson Chase sustained serious injuries in an accident involving a Piper PA-46-500TP aircraft, FAA Registration N891CR, in Corinth, Mississippi. Ms. Chase died from injuries sustained in the accident the following August.

54. The NTSB investigated this accident and assigned it Accident No. ERA16LA078.

55. On October 11, 2016, the Wolk Law Firm issued FOIA Request No. 2017-0048 (“048 Request”) to the NTSB seeking documents, evidence and data related to the NTSB’s investigation of the accident which resulted in the death of Lauren Chase. (Ex. C at pgs. C.1-4).

56. The 048 Request was denied on November 21, 2016, based on Exemptions 5 and 7(A) of FOIA. (Ex. C at pgs. C.5-7).

57. Plaintiff appealed the request on December 2, 2016 because neither Exemption applies, which the NTSB received via United States Post Office Certified Mail on December 22, 2016. (Ex. C at pg. C.8-20).

58. On January 4, 2018, the NTSB denied Plaintiff’s appeal. (Ex. C at pgs. C.21-23).

59. On May 1, 2018, after the NTSB factual report and public docket were released, Plaintiff issued another FOIA request seeking documents, evidence and data related to the NTSB’s investigation of the accident which resulted in the death of Lauren Chase. This request was assigned FOIA Request No. 2018-00299 (“May 1, 2018 Request”). (Ex. C at pgs. C.24-27).

60. No response was received within the time required under FOIA, so Plaintiff submitted an appeal on July 11, 2018. (Ex. C at pgs. C.28-39).

61. On August 13, 2018, the NTSB issued a canned response stating that it would take additional time to respond to the Appeal without providing any determination on the Appeal or any date on which a determination is expected to be dispatched. (Ex. C at pg. C.40).

62. Since the NTSB failed to provide a determination to Plaintiff's Appeal within the 20 day period prescribed by 5 U.S.C. § 552(a)(6)(A)(i), Plaintiff has exhausted the administrative remedies.

**Arrin Farrar
Cessna 172 (N6238D)
NTSB Accident Investigation No. ERA16FA141
FOIA Request No. 2018-00465 (Appeal No. 2019-00001-A)**

63. On March 26, 2016, Arrin Farrar was injured in an accident involving a Cessna 172 aircraft, FAA Registration N6238D, in Charleston, West Virginia.

64. The NTSB investigated this accident and assigned it Accident No. ERA16FA141.

65. On September 12, 2018, the Wolk Law Firm issued FOIA Request No. 2018-00465 ("465 Request") to the NTSB seeking documents, evidence and data related to the NTSB's investigation of the accident which resulted in injuries to Arrin Farrar. (Ex. D at pgs. D.1-2). It was acknowledged on September 14, 2018. (Ex. D. at pgs. D.3-4).

66. The 465 Request was denied on September 28, 2018 on the basis that much of the information sought involved documents and records that are be part of the NTSB's public docket, which could be accessed on-line, and that there were no other responsive records. (Ex. D at pgs. D.5-6).

67. However, the information available on the public docket is a small fraction of what is collected during the course of the NTSB investigation, and other information and documents are believed to exist.

68. Plaintiff submitted an appeal on October 1, 2018, and the NTSB acknowledged receipt of the appeal on the same day. (Ex. D at pgs. D.7-10).

69. Since the NTSB failed to provide a determination to Plaintiff's Appeal within the 20 day period prescribed by 5 U.S.C. § 552(a)(6)(A)(i), Plaintiff has exhausted the administrative remedies.

**Estate of Troy L. Gentry
Schweizer 269C (N204HF)
NTSB Investigation No. ERA17FA317
FOIA Request No. 2018-00371 (Appeal No. 2018-00011-A)**

70. On September 8, 2017, Troy Gentry was fatally injured in an accident involving a Schweizer 269C aircraft, FAA Registration N204HF, in Medford, New Jersey.

71. The NTSB investigated this accident and assigned it Accident No. ERA17FA317.

72. On July 10, 2018, the Wolk Law Firm issued FOIA Request No. 2018-00371 ("371 Request") to the NTSB seeking documents, evidence and data related to the NTSB's investigation of the accident which resulted in the death of Troy Gentry. (Ex. E at pgs. E.1-2). The request was acknowledged on July 19, 2018. (Ex. E at pgs. E.3-5).

73. The 371 Request was denied on July 19, 2018 based on Exemptions 5 and 7(A) of FOIA. (Ex. E at pgs. E.6-8).

74. Plaintiff submitted an appeal on August 14, 2018, and the NTSB acknowledged receipt of the appeal on the same day. (Ex. E at pgs. E.9-12).

75. On September 11, 2018, the NTSB denied Plaintiff's appeal. (Ex. E at pg. E.13).

76. Plaintiff has exhausted its administrative remedies.

**Estate of William Gordon
NTSB Investigation No. ERA16LA195
FOIA Request No. 2018-00469 (Appeal No. 2019-00007-A)**

77. On May 27, 2016, William Gordon was fatally injured in an accident involving a Republic P-47D aircraft in Edgewater, New Jersey.

78. The NTSB investigated this accident and assigned it Accident No. ERA16LA195.

79. On September 14, 2018, Plaintiff issued FOIA Request No. 2018-00469 (“469 Request”) to the NTSB seeking documents, evidence and data related to the NTSB’s investigation of the accident which resulted in the death of William Gordon. (Ex. F at pgs. F.1-2). The request was acknowledged the same day. (Ex. F at pg. F.3).

80. No response was received within the time required under FOIA, so Plaintiff submitted an appeal on December 5, 2018, and the NTSB acknowledged receipt of the appeal on the same day. (Ex. F at pgs. F.4-5).

81. On February 6, 2019, the NTSB issued a canned response stating that it would take additional time to respond to the Appeal without providing any determination on the Appeal or any date on which a determination is expected to be dispatched. (Ex. F at pgs. F.6-7).

82. Since the NTSB failed to provide a determination to Plaintiff’s Appeal within the 20 day period prescribed by 5 U.S.C. § 552(a)(6)(A)(i), Plaintiff has exhausted the administrative remedies.

**Robert and Brenda Hinkle
John Michael and Dawn Skinner
Cirrus SR22T (N227RR)
NTSB Accident Investigation No. ERA15LA062
FOIA Request No. 2016-00356 (Appeal No. 2017-00020-A)**

83. On November 28, 2014, Robert Hinkle, Brenda Hinkle, John Skinner and Dawn Skinner were injured in an accident involving a Cirrus SR22T aircraft in Hampton, South Carolina.

84. The NTSB investigated this accident and assigned it Accident No. ERA15LA062.

85. On July 22, 2016, Plaintiff issued FOIA Request No. 2016-00356 ("356 Request") to the NTSB seeking documents, evidence and data related to the NTSB's investigation of the accident which resulted in injuries to Robert Hinkle, Brenda Hinkle, John Skinner and Dawn Skinner. (Ex. G at pgs. G.1-2). The request was acknowledged the same day. (Ex. G at pg. G.3)

86. No response was received within the time required under FOIA, so Plaintiff submitted an Appeal on January 20, 2017, and the NTSB acknowledged receipt of the Appeal on April 21, 2017. (Ex. G at pgs. G.4-14).

87. Since the NTSB failed to provide a determination to Plaintiff's Appeal within the 20 day period prescribed by 5 U.S.C. § 552(a)(6)(A)(i), Plaintiff has exhausted the administrative remedies.

**Estate of Ryan Lee McCall
Piper PA-28-140 (N32396)
NTSB Investigation No. ERA15FA170
FOIA Request No. 2016-00356 (Appeal No. 2017-00017-A)**

88. On March 29, 2015, Ryan Lee McCall was fatally injured in an accident involving a Piper PA-28-140 aircraft, FAA Registration No. N32396, in Orange, Virginia.

89. The NTSB investigated this accident and assigned it Accident No. ERA15FA170.

90. On July 20, 2016, Plaintiff issued FOIA Request No. 2016-00346 (“346 Request”) to the NTSB seeking documents, evidence and data related to the NTSB’s investigation of the accident which resulted in the death of Ryan Lee McCall. (Ex. H at pgs. H.1-2). The request was acknowledged the same day. (Ex. H at pg. H.3).

91. No response was received within the time required under FOIA, so Plaintiff submitted an appeal on October 18, 2016. (Ex. H at pgs. H.4-12).

92. Having received no acknowledgment or response to the Appeal, Plaintiff submitted a second Appeal on January 18, 2017, and the NTSB acknowledged receipt of this latest Appeal on April 21, 2017. (Ex. H at pgs. H.13-22).

93. On August 7, 2017, the status of Plaintiff’s Appeal request was updated to “Closed,” although no response was ever provided. (Ex. H at pg. H.24).

94. Plaintiff has exhausted its administrative remedies.

**Estates of Gerald and Diane Stubbs
Cessna T310R (N72TP)
NTSB Investigation No. CEN15FA307
FOIA Request No. 2018-00374 (Appeal No. 2019-00002-A)**

95. On July 18, 2015, Gerald and Diane Stubbs were fatally injured in an accident involving a Cessna T310R aircraft, FAA Registration No. N72TP, in Cody, Wyoming.

96. The NTSB investigated this accident and assigned it Accident No. CEN15FA307.

97. On July 11, 2018, Plaintiff issued FOIA Request No. 2018-00374 (“374 Request”) to the NTSB seeking documents, evidence and data related to the NTSB’s investigation of the accident which resulted in the deaths of Gerald and Diana Stubbs. (Ex. I at pgs. I.1-2). The request was acknowledged on July 20, 2018. (Ex. I at pgs. I.3-5).

98. No response was received within the time required under FOIA, so Plaintiff submitted an appeal on September 17, 2018, and the NTSB acknowledged receipt of the Appeal on October 1, 2018. (Ex. I at pgs. I.6-9).

99. Since the NTSB failed to provide a determination to Plaintiff's Appeal within the 20 day period prescribed by 5 U.S.C. § 552(a)(6)(A)(i), Plaintiff has exhausted the administrative remedies.

Gregory Torres
Estates of Diana Soto, Evelyn Walker and James Walker
Rockwell Commander 114B (N4775W)
NTSB Identification No. WPR15FA163
FOIA Request No. 2016-00227

100. On May 17, 2015, Gregory Torres was seriously injured, and Diana Soto, Evelyn Walker and James Walker were fatally injured in an accident involving a Rockwell Commander 114B aircraft, FAA Registration No. N4775W, in Laughlin, Nevada.

101. The NTSB investigated this accident and assigned it Accident No. WPR15FA163.

102. On March 29, 2016, Plaintiff issued FOIA Request No. 2016-00227 ("227 Request") to the NTSB seeking documents, evidence and data related to the NTSB's investigation of the accident which resulted in injuries to Gregory Torres and caused the deaths of Diana Soto, Evelyn Walker and James Walker. (Ex. J at pgs. J.1-2). The request was acknowledged on April 4, 2016. (Ex. J at pg. J.3).

103. The 227 Request was denied on November 28, 2016 based on Exemptions 5 and 7(A) of FOIA. (Ex. J at pgs. J.4-6).

104. Plaintiff submitted an appeal on January 18, 2017. (Ex. J at pgs. J.7-8).

105. Since the NTSB failed to provide a determination to Plaintiff's Appeal within the 20-day period prescribed by 5 U.S.C. § 552(a)(6)(A)(i), Plaintiff has exhausted the administrative remedies.

106. Plaintiff, as set forth below, seeks recourse from this Court for each of the FOIA and Section 837 violations which have occurred in the requests, above, by the NTSB.

SUMMARY OF REQUESTS

107. The following chart summarizes Plaintiff's requests pursuant to 49 C.F.R. Part 837, and the Freedom of Information Act, and the NTSB's failure to provide information and evidence as it relates to 10 separate aircraft accidents.

Estate of Berke Morgan Bates Estate of Henry John Cullen, III Aircraft (N31VA) August 12, 2017 in Charlottesville, Virginia NTSB Investigation No. ERA17FA274		
Request No.	Request	Disposition
49 C.F.R. § 837, <i>et seq.</i>	Helicopter Wreckage, Video of Accident & Documents concerning Accident Investigation	<p>3/4/19 – Request & Affidavit Submitted</p> <p>3/14/19 – NTSB Denial</p> <p>3/19/19 – USP Denied Access to Videos of Accident Flight by instruction of the NTSB</p> <p>Plaintiff denied access to the helicopter wreckage, video of accident, and other critical evidence in the face of a fast approaching Statute of Limitations on August 12, 2019.</p>

**Estate of Christopher Freeman Byrd
Estate of Phillip Armstrong Byrd
Estate of Grady G. Byrd, III**

**Piper PA-32R-300 (N5802V)
May 8, 2015 in Atlanta, Georgia**

NTSB Investigation No. ERA15FA208

Request No.	Request	Disposition
FOIA-2016-00438 Appeal No. A2017-00018-A	Investigation Material	9/29/16 – Request & NTSB Acknowledged 1/19/17- Appeal for Lack of Response 4/21/17 – Appeal Acknowledged 8/2/17 – Appeal Status is “Closed” but no response was provided

Estate of Lauren Johnson Chase

**Piper PA-46-500TP (N891CR)
December 24, 2015 in Corinth, Mississippi**

NTSB Investigation No. ERA16LA078

Request No.	Request	Disposition
FOIA-2017-00048 Appeal No. 2017-00015-A	Investigation Material	10/11/16 – Request 11/21/16 – Response Denied 12/02/16 – Appeal 12/22/16 – Appeal Received via Certified Mail 01/04/18 – Appeal Denied

Arrin Farrar

**Cessna 172 (N6238D)
March 26, 2016 in Charleston, West Virginia**

NTSB Investigation No. ERA16FA141

Request No.	Request	Disposition
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FOIA-2018-00465 Appeal No. 2019-00001-A	Investigation Material	9/12/18 – Request 9/14/18 - NTSB Acknowledged 9/28/18 – NTSB Response referring requestor to the few items available online. 10/1/18 – Appeal Served & Acknowledged
<p align="center">Estate of Troy L. Gentry</p> <p align="center">Schweizer 269C (N204HF)</p> <p align="center">September 8, 2017 in Medford, New Jersey</p> <p align="center">NTSB Investigation No. ERA17FA317</p>		
Request No.	Request	Disposition
FOIA-2018-00371 Appeal No. 2018-00011-A	Investigation Material	7/10/18 – Request 7/19/18 – Denial 8/14/18 – Appeal 9/11/18 – Appeal Denied
<p align="center">Estate of William Gordon</p> <p align="center">Republic P-47D</p> <p align="center">May 27, 2016 in Edgewater, New Jersey</p> <p align="center">NTSB Investigation No. ERA16LA195</p>		
Request No.	Request	Disposition
FOIA-2018-00469 Appeal No. 2019-00007-A	Investigation Material	9/14/18 – Request Issued & Acknowledged by the NTSB 12/5/18 – Appeal Due to Lack of Response & NTSB Acknowledged 02/06/19 – Appeal Response. No determination made, and unidentified extension of time to address issues on appeal.

**Robert and Brenda Hinkle
John Michael and Dawn Skinner**

**Cirrus SR22T (N227RR)
November 28, 2014 in Hampton, South Carolina**

NTSB Investigation No. ERA15LA062

Request No.	Request	Disposition
FOIA-2016-00356	Investigation Material	7/22/16 – Request
Appeal No. 2017-00020-A		7/22/16 - NTSB Acknowledged & status has remained “In Process” 1/20/17 – Appeal 4/21/17 – Appeal Acknowledged 3/27/19 – Status “Closed” although no response has been provided

Estate of Ryan Lee McCall

**Piper PA-28-140 (N32396)
March 29, 2015 in Orange, Virginia**

NTSB Investigation No. ERA15FA170

Request No.	Request	Disposition
FOIA-2016-00346	Investigation Material	7/20/16 – Request
Appeal No. 2017-00017-A		7/20/16 NTSB Acknowledged & has status has remained “In Process” 10/18/16 – Appeal (Never Acknowledged from the NTSB) 1/18/17 Appealed Again for Lack of Response 4/21/17 - NTSB Acknowledged Appeal 8/7/17 – Appeal Acknowledged but Marked “Closed” on the same day

<div>Estates of Gerald and Diane Stubbs</div> <div>Cessna T310R (N72TP)</div> <div>July 18, 2015 in Cody, Wyoming</div> <div>NTSB Investigation No. CEN15FA307</div>		
Request No.	Request	Disposition
FOIA-2018-00374	Investigation Material	7/11/18 – Request
Appeal No. 2019-00002-A		7/20/18 - NTSB Acknowledged
		9/17/18 – Appeal
		10/1/18 - NTSB Acknowledged Appeal
		No response received
<div>Gregory Torres</div> <div>Estate of Diana Soto</div> <div>Estate of Evelyn Walker</div> <div>Estate of James Walker</div> <div>Rockwell Commander 114B (N4775W)</div> <div>May 17, 2015 in Laughlin, Nevada</div> <div>NTSB Identification No. WPR15FA163</div>		
Request No.	Request	Disposition

FOIA - 2016-00227	Investigation Material	3/29/16 – Request 4/4/16 - NTSB Acknowledged 7/20/16 - Status Request; no response received 10/26/16 - Status Request 10/31/16 - Received response: no change in status “still processing” 11/28/16 - Request Denied 1/18/17 - Appeal No response received
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COUNT I

Obstruction of Justice and Violation of Due Process

108. Plaintiff fully incorporates by reference paragraphs 1 through 107 herein.

109. The NTSB, through its officers, employees and/or its agents, including party participants, acted and continues to act with intent to avoid, evade, prevent and/or obstruct the timely investigation of airplane crashes.

110. The NTSB, through its officers, employees and/or its agents, including party participants, did and does delay the investigations, the release of aircraft wreckage, the release of photographs, data and/or information and the final factual reporting of airplane crash investigations thereby delaying and denying justice and Due Process for Plaintiff and others similarly situated.

111. The NTSB, through its officers, employees and/or its agents, including party participants, continues to this day to obstruct the fair administration of justice and Due Process by preventing Plaintiff access to evidence and facts related to airplane crashes.

112. The NTSB, though its officers, employees and/or its agents, including party participants, continues to this day to obstruct, withhold and/or destroy evidence of airplane crashes, which evidence includes photographs, notes, manuals, and other evidence and only allows crash victims access to its “Public Docket” which contains only those photographs, notes, manuals and other evidence selected by the NTSB with the sole input of the manufacturer party participants who are putative defendants in lawsuits arising from the crash.

113. This conduct is clearly seen through the denial of Plaintiff’s requests pursuant to Part 837 on behalf of the Bates and Cullen families to access critical evidence of the accident wreckage, video footage of the accident, and other investigation material.

114. This information is available to manufacturers, potential defendants in civil litigation, but has been withheld from the Bates and Cullen families without any legitimate basis.

115. The NTSB has also obstructed Plaintiff’s investigation of 10 accidents through withholding accident investigation material, photographs, videos, data, correspondence, notes, and other material.

116. The NTSB has actively obstructed accident victims and their families from accessing information and evidence to their detriment, and in violation of their rights to Due Process.

117. The NTSB’s obstruction of justice, collusion with manufacturers and intentional delay is a violation of Due Process under state and Federal Constitution and laws.

WHEREFORE, Plaintiff seeks an Order compelling the NTSB to immediately release any and all wreckage, documents, data and evidence that relate to the accidents at issue in this matter and further relief as the Court may deem just and proper.

COUNT III
Violation of 14 C.F.R. § 837.4

118. Plaintiff fully incorporates by reference paragraphs 1 through 117 herein.

119. Furthermore, pursuant to 14 C.F.R. § 837.4, the NTSB is required to deliver or grant access to material collected, considered, or created in its investigation. This includes aircraft wreckage and video footage of the accident flight.

120. The NTSB has withheld physical evidence from the Bates/Cullen accident, ERA17FA274, including videos of the accident and the wreckage itself, as well as documentation on their removal and chain of custody and not made reasonable inquiries into their whereabouts.

121. The NTSB's inexplicable and unjustifiable conduct in halting an investigation to a standstill, such as it has done in the case of other instances, inflicts harm and prejudice to accident victims investigating potential wrongful death claims as it places them at risk of not inspecting evidence before the passage of the statute of limitations.

122. The NTSB's refusal to grant access to the wreckage of ERA17FA274 in response to a legally valid Section 837.4 request and affidavit is unreasonable and legally wrong.

123. Further, its refusal to permit Plaintiff to view the video evidence of the subject accident of ERA17FA274, is unreasonable and legally wrong, and the denial improper of Plaintiff's request under §837.4, particularly when the final report has already been released.

124. The NTSB is not conducting an ongoing investigation of either accident. It has done nothing for more than a year.

125. While the NTSB has not issued a final report in ERA17FA274, its neglect in attempting to reschedule any further investigation of the wreckage in the past year is evidence that it has no intent to do so.

126. Therefore, the NTSB has no right nor legal basis to deny access to the wreckage, since it has no further need to keep it sequestered.

127. Alternatively, the NTSB should be ordered to show cause why it cannot complete its investigation of the wreckage within the next 30 days.

WHEREFORE, Plaintiff seeks an Order compelling the NTSB to immediately release the wreckage and videos at issue in the investigation of ERA17FA274 and such other and further relief as the Court may deem just and proper.

COUNT III
Violation of the Freedom of Information Act

128. Plaintiff fully incorporates by reference paragraphs 1 through 127 herein.

129. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(6)(A)(i), the NTSB shall determine whether to comply with a request and notify the requester of the determination within twenty (20) business days from the date the request was received.

130. Under the Freedom of Information Act, if the NTSB encounters “unusual” circumstances which require an extended period of time to process the request, the Defendant must provide the requester with written notice “setting forth the unusual circumstances for such an extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten days, except as provided in clause (ii) of this paragraph.” 5 U.S.C. § 552(a)(6)(B)(i).

131. Under the Freedom of Information Act, if the NTSB extends the time limits, it shall notify the requestor and provide an opportunity to limit the scope of the request so that it may be processed within the time limit or arrange an alternative time limit. 5 U.S.C. § 552(a)(6)(B)(ii).

132. Each FOIA requests described above were either denied or not timely processed within the statutorily mandated deadlines.

133. The Freedom of Information Act, Section 552(a)(6)(C) states that “[a]ny person making a request to any agency for records. . . shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph.”

134. Plaintiff has exhausted administrative remedies provided by the Freedom of Information Act as detailed above.

135. Plaintiff issued appeals of the FOIA requests that were denied or unanswered.

136. Under the Freedom of Information Act, when an appeal is taken, the agency must “make a determination within twenty days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such appeal.” 5 U.S.C. § 552(a)(6)(A)(ii).

137. Only in unusual circumstances may this time period be extended “by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days”. 5 U.S.C. § 552(a)(6)(B).

138. The NTSB failed to provide a timely determination to the appeals of Requests Nos. 438, 465, 469, 356, 346, 374, or 227, as required under the Freedom of Information Act.

139. Nor did the NTSB provide a timely explanation of any unusual circumstances for such extension or the date on which a determination is expected to be dispatched, as required under the Freedom of Information Act.


140. The NTSB denied appeals of FOIA Request Nos. 048, and 371.

141. Plaintiff has exhausted administrative remedies provided by the Freedom of Information Act.

142. Plaintiff now seeks this Court's assistance in compelling full and complete responses to Plaintiff's FOIA requests at issue in this matter.

WHEREFORE, Plaintiff seeks an Order compelling the NTSB to immediately release any and all documents, data and evidence that relates to the crash complained of herein and such other and further relief as the Court may deem just and proper.

Dated: April 2, 2019



Cynthia M. Devers, Esquire
Attorney I.D. 209144

THE WOLK LAW FIRM
1710-12 Locust Street
Philadelphia, PA 19103
(215) 545-4220
Fax: (215) 545-5252
cdevers@airlaw.com
courtfilings@airlaw.com
Attorneys for Plaintiffs

EXHIBIT “A”

BATES/CULLEN
NTSB No. ERA17FA274
D/A August 12, 2017
Location: Charlottesville, VA

Page Number	Request	Date	Action
A.1-7	View Wreckage	3/4/19	Letter Submitted
A.8		3/14/19	Response Received

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

March 4, 2019

Via First Class Mail – Certified Return Receipt Requested

Kathleen Silbaugh, Esquire
General Counsel
National Transportation Safety Board
490 L'Enfant Plaza East, SW
Washington, DC 20594

Re: Estates of Berke Morgan Bates and Henry John Cullen III
NTSB ID # ERA17FA274

Dear Ms. Silbaugh:

I am writing you concerning the above captioned crash and particularly the release of this wreckage presently in the possession of the NTSB. I represent the Estates of Berke Bates and Henry Cullen, the Virginia State Troopers, who were tragically killed when their helicopter crashed on August 12, 2017.

My office was notified by the Investigator In Charge, Mr. Todd Gunther, that the NTSB will need the wreckage for another 90 to 120 days. He advised us there was a 35 day delay due to the government shutdown. Unfortunately, the government shutdown does not apply to our statute of limitations. It is vital that we receive this wreckage to conduct our own inspection well prior to the running of the statute of limitations on August 12, 2019. It takes months sometimes to arrange for an inspection given the commitments of others, their experts and lawyers. We won't know until we examine it who may be responsible for the crash and that takes time, thus the delay of 90 to 120 days leaves insufficient time for all of this before the statute runs. In the year and a half before the government shutdown, the NTSB and a number of potential parties in this litigation had more than ample time before the 35 day shutdown to examine this wreckage extensively. We and representatives of our clients have not. Of course, we are willing to share any photographs or videos of our inspection with the NTSB at no charge.

Our practice is limited to aircraft accident litigation for plaintiffs.

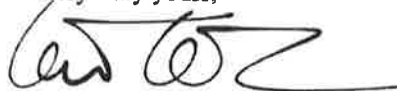


Kathleen Silbaugh, Esquire
March 4, 2019
Page Two

Further, pursuant to 49 C.F.R. Part 837, *et seq.*, I am attaching an affidavit in support of my request that this wreckage be released.

If you have questions or would like to discuss this matter, please feel free to give me a call.

Very truly yours,



ARTHUR ALAN WOLK

AAW/ap

Enclosure

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

AFFIDAVIT OF ARTHUR ALAN WOLK, ESQ.

I, Arthur Alan Wolk, hereby swear and affirm the following:

1. I am an attorney licensed to practice law in the Commonwealth of Pennsylvania. I am the founding member of The Wolk Law Firm, our office represents the Estates of Berke Morgan Bates and Henry John Cullen, III, who were killed in the crash of a Bell Helicopter on August 12, 2017. The aircraft's U.S. registration was N21VA and the NTSB ID for this accident is ERA17FA274.

2. The statute of limitations for filing a lawsuit under the law of the state where the accident occurred is two (2) years and will end on August 12, 2019.

3. The NTSB has not released the wreckage.

4. Evaluation of the wreckage is necessary to assess and identify who is potentially responsible or interested parties, and assess any operation trends of the aircraft which explains the loss of power in this accident. Evaluation of video surveillance is necessary to actually see how this accident occurred, the movements the aircraft made in the airspace, and how it impacted the ground. This information is all appropriate material to be evaluated and endorsed by the methodologies of entities such as International Civil Aviation Organization accident investigation manual and the NTSB itself.

5. The NTSB's failure to release this material has prejudiced the investigation of this accident on behalf of the families and any additional delay will prejudice the investigation further. While the NTSB is not subject to the time constraints for filing a lawsuit imposed by state

legislation, the families of the victims of this accident are. The evaluation of aircraft wreckage is a time consuming process, interested parties must be identified, given notice of inspection, given the ability to attend, and all of this must be completed in time before the filing of a lawsuit.

6. Pursuant to our office's ethical obligations set forth in the Pennsylvania Rules of Professional Conduct, our office is charged with an investigation of the facts of this accident in the course of representation of our clients.

7. Other victims of accidents have brought lawsuit against the NTSB for, among other things, failing to provide access to information and material necessary for evaluation for the preparation of lawsuit. *The Wolk Law Firm, et al. v. United States of American National Transportation Safety Board*, No. 2:14-cv-05184-CMR (E.D.PA.). Furthermore, the party participants to NTSB's investigation, including this one, are potentially responsible for the accident, are on notice of the families' involvement in assessing the viability of a lawsuit, and are in a position to influence the government investigation and its progress. The inexplicable delays in this matter, the appearance of impropriety owed to the involvement of potentially responsible entities involved in the government's investigation of this accident, and the NTSB's delays in releasing evidence the evaluation of which is necessary to protect the rights of victims justifies immediate attention to this demand and the immediate release of the wreckage.

8. Pursuant to our office's ethical obligations set forth in the Pennsylvania Rules of Professional Conduct, our office must investigate this accident and have a good-faith basis to bring claims on behalf of our clients before the statute of limitations ends on August 12, 2019.

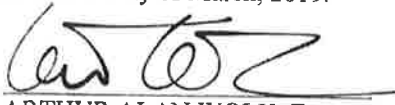
9. Because the conclusions of the NTSB are not admissible under federal statutory and regulatory law, 49 U.S.C. §1154(b); 49 C.F.R. §835.2 as well as the involvement of potentially

responsible parties in the NTSB's investigation, waiting for the results of the NTSB's investigation is meaningless and will not ameliorate the prejudice.

10. Pursuant to 49 C.F.R. Part 837, *et seq.*, the wreckage and any other material that was aboard the aircraft or created before the accident that concerns the aircraft should be immediately released so that the parties may timely inspect these components and materials.

11. The Wolk Law Firm will supply the NTSB with any photographs or videos of such examination.

SIGNED and SUBSCRIBED and EXECUTED this 4th day of March, 2019.


ARTHUR ALAN WOLK, Esq.

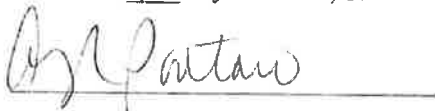
COMMONWEALTH OF PENNSYLVANIA :

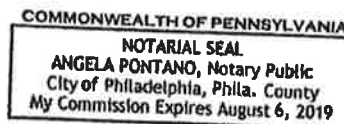
COUNTY OF PHILADELPHIA :

SS

I, the undersigned, a Notary Public in and for the Commonwealth of Pennsylvania, do certify that Arthur Alan Wolk, whose name is signed to the foregoing affidavit, has acknowledged the same before me.

Dated this 4th day of March, 2019





MY COMMISSION EXPIRES:

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Kathleen Silbaugh, Esq. NTSB 490 L'Enfant Plaza E, SW Washington DC 20594</p> <p>2. Article Number (transfer from Service Inhibit)</p> <p>7016 2070 0000 5205 9400</p>		<p>A. Signature</p> <p>X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Restricted Delivery (over \$500)</p>	

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<p>Sent to <u>NTSB</u></p> <p>Street and Apt. No., or PO Box No.</p> <p>City, State, ZIP+4®</p>	
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SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Kathleen Silbaugh, Esq. NTSB 490 L'Enfant Plaza E, SW Washington DC 20594</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>Kathleen Silbaugh</i></p> <p>B. Received by (Printed Name) Avis Clark</p> <p>C. Date of Delivery 3/7/19</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>2. Article Number (Transfer from shipping label)</p> <p>9590 9402 2094 6132 0817 27</p> <p>7016 2070 0000 5406 5400</p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input checked="" type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail® <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> <p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt	



Office of General Counsel

National Transportation Safety Board
Washington, D.C. 20594

March 14, 2019

Arthur Wolk
The Wolk Law Firm
1710-12 Locust St.
Philadelphia, PA 19103

Re: NTSB Investigation No. ERA17FA274
Virginia State Police Bell 407 accident, Charlottesville, VA, August 12, 2017

Dear Mr. Wolk:

I write in response to your letter of March 4, 2019 requesting that the National Transportation Safety Board (NTSB) release the wreckage and other material related to the above-referenced investigation so that the same may be inspected by your experts in preparation for litigation.

The accident is still under active investigation by the NTSB, and we have retained pertinent evidence for further testing as necessary. Federal law grants the NTSB exclusive authority to conduct inspections, examinations, testing (including destructive testing as necessary), documentation and all other activity involving evidence from the accident during its investigation. See 49 U.S.C. § 1134. We will, however, preserve all evidence related to the accident to the extent feasible, consistent with the needs of the investigation. Once we have completed our examination of the remaining physical evidence, it will be returned to the owner of the aircraft.

The investigative team will complete a thorough examination of the evidence, as necessary for the purposes of the NTSB. The results of all relevant photographs and work performed during the investigation will be released in the public docket for the accident at the conclusion of the NTSB investigation. Furthermore, once the physical evidence is released to the owner's custody, the NTSB does not object to any additional work you or your experts may choose to conduct as part of future civil litigation.

Should you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Benjamin T. Allen", is written over a horizontal line.

Benjamin T. Allen
Assistant General Counsel

EXHIBIT “B”

BYRD
NTSB No. ERA15FA208
D/A May 8, 2015
Location: Atlanta, GA

Page Number	Request	Date	Action
B.1-2	NTSB Investigation File	9/29/16	Initial Request Submitted
B.3	FOIA 2016-00438	9/29/16	Acknowledged/Assigned Number
B.4-12	Appeal	1/19/17	Appeal Submitted
B.13	FOIA 2017-00018-A	4/21/17	Acknowledged/Assigned Number
B.14	FOIA 2017-00018-A	8/2/17	Status Update - Closed

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-543-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

September 29, 2016

FREEDOM OF INFORMATION ACT REQUEST

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Estate of Greg Byrd
Piper PA-32R-300, N5802V
Location: Chamblee, GA
Date of Accident: May 8, 2015
NTSB I.D. No. ERA15FA208**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above captioned crash, NTSB ID No. ERA15FA208:

- All original field notes of NTSB Investigators;
- All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

AIRLAW

NTSB
September 29, 2016
Page Two

- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage;
- Wichita Mid-Continent Airport surveillance video(s); and
- The complete investigation file of Investigator, Eric Alleyne, including but not limited to notes, photographs and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: all others.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or mmiska@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,



MICHAEL S. MISKA

MSM/vg

Our practice is limited to aircraft accident litigation for plaintiffs.

From: foia@ntsb.gov
To: [Vicki Greco](#)
Subject: Request Acknowledgement by NTSB
Date: Thursday, September 29, 2016 11:12:48 AM

Dear Victoria Greco,

Case Number FOIA-2016-00438 has been assigned to the request you submitted with temporary case number [REQUEST_TEMP_CASENUMBER]. In all future correspondence regarding this request please reference case number FOIA-2016-00438.

Regards,
NTSB

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

January 19, 2017

VIA EMAIL

National Transportation Safety Board
Attention: Chief FOIA Officer, Angel Santa
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: APPEAL – FOIA 2016-00438
Estate of Greg Byrd
NTSB ID No. ERA15FA208

Dear Mr. Santa:

Please allow this letter to serve as my appeal from a denial of my FOIA request No. 2016-00438. On September 29, 2016, I submitted my FOIA concerning the NTSB's investigation of the accident which fatally injured G. (Ex. A). On September 29, 2016, I received the NTSB's acknowledgment of my submission. (Ex. B). From that date until the date of this appeal, I have periodically checked the status of my submission through the NTSB FOIA portal, and at all times the status of my request has been identified as "in process". (Ex. C).

Since the time to respond to my FOIA request had passed, I have exhausted my administrative remedies and this appeal is timely.

The family of Greg Byrd are prejudiced by the lack of response to this request because the information gathered during the investigation, that did not necessarily make its way into the public docket may not be available elsewhere and is important evidence in our investigation. For example, hundreds of photographs, notes, witness statements, documents, recordings, videos, records, and communications about the investigation may exist. This information is not only important for the Byrd family; it is important for the furtherance of public safety.



National Transportation Safety Board
January 19, 2017
Page 2

It is for these reasons that I appeal the denial of my FOIA request.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Miska", with a long horizontal flourish extending to the right.

MICHAEL S. MISKA

MSM/vg

W/attachments: Exs. A, B and C

Our practice is limited to aircraft accident litigation for plaintiffs.

EXHIBIT “A”

THE WOLK LAW FIRM
AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-543-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

September 29, 2016

FREEDOM OF INFORMATION ACT REQUEST

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: Estate of Greg Byrd
Piper PA-32R-300, N5802V
Location: Chamblee, GA
Date of Accident: May 8, 2015
NTSB I.D. No. ERA15FA208

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above captioned crash, NTSB ID No. ERA15FA208:

- All original field notes of NTSB Investigators;
- All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."

Our practice is limited to aircraft accident litigation for plaintiffs.



NTSB
September 29, 2016
Page Two

- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage;
- Wichita Mid-Continent Airport surveillance video(s); and
- The complete investigation file of Investigator, Eric Alleyne, including but not limited to notes, photographs and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: all others.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or mmiska@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Miska", with a horizontal line extending to the right.

MICHAEL S. MISKA

MSM/vg

Our practice is limited to aircraft accident litigation for plaintiffs.

EXHIBIT “B”

From: foia@ntsb.gov
To: [Vicki Greco](#)
Subject: Request Acknowledgement by NTSB
Date: Thursday, September 29, 2016 11:12:48 AM

Dear Victoria Greco,

Case Number FOIA-2016-00438 has been assigned to the request you submitted with temporary case number [REQUEST_TEMP_CASENUMBER]. In all future correspondence regarding this request please reference case number FOIA-2016-00438.

Regards,
NTSB

EXHIBIT “C”

Request Details

Page 1

Requests Status			
Request Number	Description	Received Date	Request Status

FOIA-2016-00438	See attached FOIA Request in reference to NTSB I.D. No. ERA15FA208 for the investigation file of the accident in Chamblee, Georgia on May 8, 2015.	9/29/2016 11:13:47 AM	In Process
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From: fola@ntsb.gov
To: Vicki Greco
Subject: Request Acknowledgement by NTSB
Date: Friday, April 21, 2017 12:01:28 PM

Dear Victoria Greco,

Case Number FOIA-2017-00018-A has been assigned to the request you submitted with temporary case number [REQUEST_TEMP_CASENUMBER]. In all future correspondence regarding this request please reference case number FOIA-2017-00018-A.

Regards,
NTSB

From: fola@ntsb.gov
To: [Vicki Greco](#)
Subject: Status Update for Request #FOIA-2017-00018-A
Date: Wednesday, August 02, 2017 11:09:22 AM

Dear Victoria Greco,

The status of your Appeal request #FOIA-2017-00018-A has been updated to the following status 'Closed'. To log into the PAL Application click on the Application URL below.

https://foiarequest.nts.gov:444/pal_ConfigMain.aspx

Sincerely,
NTSB

EXHIBIT “C”

**CHASE
NTSB No. ERA16LA078
D/A December 24, 2015
Location: Corinth, MS**

Page Number	Request	Date	Action
C.1-4	NTSB Investigation File	10/11/16	Initial Request
C.5-7	FOIA 2017-0048	11/21/16	Denied
C.8-20	Appeal	12/2/16	Appeal Submitted
C.21-23	FOIA 2017-00015-A	1/4/18	Denied
C.24-27	Post-Docket Request	5/1/18	Submitted
C.28-39	Appeal	7/11/18	Submitted
C.40	FOIA 2018-00009-A	8/13/18	Response

THE WOLK LAW FIRM

1710 72 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

October 11, 2016

FREEDOM OF INFORMATION ACT REQUEST

Via Fax (240) 752-6257

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: NTSB Investigation No. ERA16LA078
Aircraft: Piper PA-46/500 TP
Reg. #: N891CR
D/A: December 24, 2015
P/A: Corinth, MS

Dear Sir/Madam:

We are investigating this matter on behalf of the family of Lauren Johnson Chase, who was fatally injured as a result of the December 24, 2015 accident involving a Piper PA-46/500 TP aircraft (N891CR) near Corinth, Mississippi.

Pursuant to the Freedom of Information Act, 5 U.S.C. § *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting certified copies of the following material relating to this accident and NTSB Investigation No. ERA16LA078:

- All original interview records before summarization or re-recording, recordings, notes, or other document concerning witness interviews;
- Aircraft logbooks, engine logbooks, squawk sheets, or other maintenance records concerning the accident aircraft;

THE WOLK LAW FIRM

National Transportation Safety Board
October 11, 2016
Page 2

- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports";
- The Piper report of investigation;
- The Federal Aviation Administration report of investigation;
- All original field notes of NTSB and FAA Investigators;
- All original photographs, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- Signatory list of all participants as Party Members to the investigation;
- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All photographs documenting the wreckage and accident site;
- Cell phone tower records and data;
- Emergency locator transmitter records and data;
- Surveillance video;
- Toxicology records from FAA Civil Aerospace Medical Institute Forensic Toxicology Research Team;

THE WOLK LAW FIRM

National Transportation Safety Board
October 11, 2016
Page 3

- GPS metadata; and
- The complete investigation file for this accident.

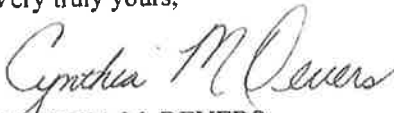
While a very small portion of the data collected during the investigation is available through General Microfilm, we are interested in the entire investigation file.

In order to determine my status to assess fees, my fee category is: **all others**.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or cdevers@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,


CYNTHIA M. DEVERS

CMD/lmt

TRANSMISSION VERIFICATION REPORT

TIME : 10/11/2016 18:01
NAME : WOLK LAW FIRM
FAX : 2155455252
TEL : 2155454220
SER. # : BROJ8J866518

DATE, TIME	10/11 18:00
FAX NO./NAME	12407525257
DURATION	00:00:58
PAGE(S)	03
RESULT	OK
MODE	FINE
	ECM

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1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-8252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

October 11, 2016

FREEDOM OF INFORMATION ACT REQUEST

Via Fax (240) 752-6257

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: NTSB Investigation No. ERA16LA078
Aircraft: Piper PA-46/500 TP
Reg. #: N891CR
D/A: December 24, 2015
P/A: Corinth, MS

Dear Sir/Madam:

We are investigating this matter on behalf of the family of Lauren Johnson Chase, who



National Transportation Safety Board
Washington, D.C. 20594

November 21, 2016

Ms. Cynthia Devers
Attorney
The Wolk Law Firm
1710 Locust Street
Philadelphia, PA 19103

Re: National Transportation Safety Board (NTSB)
Freedom of Information Act (FOIA) No. FOIA-2017-00048
December 24, 2015, Corinth, MS (ERA16LA078)

Dear Ms. Devers:

This letter is in response to your FOIA request for records from the above NTSB Investigation. This investigation is currently ongoing.

The Safety Board does not release records from pending investigations, because such release would impede the progress of the investigation and deter uninhibited deliberations and discussions regarding certain aspects of the investigation. As such, the Safety Board denies requests for records from pending investigations in accordance with Exemptions 5, and 7(A) of the FOIA, as explained below. Please note that, once the investigation is approaching conclusion, the Safety Board makes publicly available all information that was pertinent to each investigation in the form of a "public docket." This letter describes public dockets in detail, and provides instructions regarding how you can put your name and contact information on a list to receive the public docket information.

Congress has charged the Safety Board with investigating transportation accidents, determining the probable causes of the accidents, and issuing safety recommendations in order to prevent future accidents. 49 U.S.C. §§ 1131 (investigations) and 1135 (safety recommendations). Disclosure of records from a pending investigation would undermine the Safety Board's independence, objectivity, and effectiveness, which are critical to the Board's ability to investigate transportation accidents effectively. Preliminary records reflecting the Board's deliberative process are exempt from disclosure pursuant to Exemption 5 of the FOIA. See, e.g., *NLRB v. Sears, Roebuck & Co.*, 421 US 132, 148-51 (1975); *Ancient Coin Collectors Guild v. U.S. Dep't of State*, 2011 WL 1437419, *506 (D.C. Cir.) (citing *Wolfe v. Dep't of Health and Human Servs.*, 839 F.2d 768, 773 (D.C. Cir. 1988)(en banc)). The Safety Board cannot guarantee that preliminary materials, such as records from a pending investigation, would be accurate or complete; therefore, release of such information would result in confusion and compromise the Board's work. Similarly, material reflecting the Safety Board's deliberative process is exempt from disclosure in order to ensure the free flow of information during the course of the Board's investigations. *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977).

In addition, the FOIA does not require the Safety Board to release records when such release could interfere with the progress of an ongoing investigation. 5 U.S.C. § 552(b)(7)(A). At times, the Safety Board's investigations lead to other agencies' regulatory rulemaking. Courts have long recognized that the provisions of Exemption 7 apply to regulatory civil enforcement, not simply the enforcement of criminal statutes. See, e.g., Rugiero v. United States Dep't of Justice, 257 F.3d 534, 550 (6th Cir. 2001) (explaining that the "Court has adopted a per se rule" that applies not only to criminal enforcement actions, but to "records compiled for civil enforcement purposes as well"), cert. denied, 534 U.S. 1134 (2002); Rural Hous. Alliance v. United States Dep't of Agriculture, 498 F.2d 73, 81 & n.46 (D.C. Cir. 1974) (stating that "law enforcement purposes ... include both civil and criminal purposes"). Within this statutory framework, records from an ongoing Safety Board transportation investigation are exempt from disclosure under FOIA Exemption 7(A).

As mentioned above, at the conclusion of each investigation, the Safety Board makes investigative information available to the public in the form of "public dockets." These public dockets of information are voluminous and include all information that the investigators have deemed as pertinent to the investigation. In addition, when requesters seek all information from a specific investigation, the Safety Board's FOIA Office, in accordance with applicable case law, places such requests on a specific "track," and answers them on a first-in, first-out basis. Open Am. v. Watergate Special Prosecution Force, 547 F.2d 605, 614-616 (D.C. Cir. 1976). Therefore, the most efficient and timely way that requesters can receive information from an investigation is to place their names on a waiting list for receiving all information on the public docket for the particular investigation. I strongly recommend that you place your name on this list, and you will receive the information on the public docket once it becomes available.

The Safety Board's records facility, General Microfilm, Inc. (GMI), will record your name and contact information and, once the information in the public docket becomes available, GMI will send you all records from the public docket you seek for a fee. The contact information for General Microfilm, Inc. is as follows: 630 Files Cross Road, Martinsburg, West Virginia 25404, (304) 267-5830, <http://www.general-microfilm.com>. Public dockets are also available on the Safety Board's web site at <http://www.nts.gov/investigations/dms.html>.

In addition, with regard to aviation accident investigations, the Safety Board's public website also contains a database with information regarding most investigations. The public can use this database to determine the general status of an investigation, and obtain the preliminary, factual or probable cause report regarding the information from aviation investigations. You may search the aviation accident investigation database at <http://www.nts.gov/aviationquery/index.aspx>.

In summary, submitting a FOIA request is not the most expeditious way that you can receive the information you seek. Therefore, I recommend that you contact GMI and utilize the Safety Board's aviation accident database, as described above.

To the extent that I have denied your FOIA request, you may appeal my decision by writing to:
Mr. Thomas E. Zoeller, Managing Director, NTSB, 490 L'Enfant Plaza East, SW, Washington, DC
20594.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melba D. Moye". The signature is fluid and cursive, with the first name "Melba" being more prominent.

Melba D. Moye
FOIA Officer

THE WOLK LAW FIRM

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

December 2, 2016

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

National Transportation Safety Board
Attention: Mr. Thomas E. Zoeller, Managing Director
490 L'Enfant Plaza, S.W.
Washington, DC 20594

Re: APPEAL – FOIA 2017-00048
Estate of Lauren Chase
NTSB ID No. ERA16LA078

Dear Mr. Zoeller:

Please allow this letter to serve as my appeal from a denial of my FOIA request No. 2017-00048, (Ex. A, FOIA Request). On November 21, 2016, the NTSB denied my request for the investigation file. (Ex. B, 11/21/16 Denial Letter). The basis for the NTSB's denial is that the inspection is ongoing, and that Exemptions 5 and 7(A) apply. Since my request was denied, I have exhausted my administrative remedies and this appeal is timely.

The FOIA Act is "broadly conceived" and its "basic policy" is in favor of disclosure." *N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 221 (1978). "[U]nless the requested material falls within one of these nine statutory exemptions, FOIA requires that records and material in the possession of federal agencies be made available on demand to any member of the general public." *Id.* at 220-221. When documents are withheld pursuant to an exemption, the government "bears the burden of proving the applicability of claimed exemptions." *Mullitt v. Dep't of State*, 926 F. Supp. 2d 284, 291 (D.D.C. 2013). Here, the NTSB has not demonstrated how Exemptions 5 and 7(A) apply to my request for the aircraft accident investigation file.

Our practice is limited to aircraft accident litigation for plaintiffs.

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APPEAL – FOIA 2017-00048
Page 2

Exemption 5

Exemption 5 applies to “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). This can only apply if two conditions are met: “its source must be a Government agency, and it must fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds it.” *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8 (2001).

Here, the NTSB is claiming the “deliberative process privilege.” (Ex. B). This privilege “covers documents reflecting advisory opinions, recommendations, and deliberations that are part of a process by which Government decisions and policies are formulated.” *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 2, 121 S. Ct. 1060, 1062, 149 L. Ed. 2d 87 (2001). To invoke this privilege, the document must be “predecisional and ‘part of the deliberative process.’” *Muttitt v. Dep’t of State*, 926 F. Supp. 2d 284, 305 (D.D.C. 2013). Predecisional means “antecedent to the adoption of agency policy,” *United States v. Pac. Gas & Elec. Co.*, No. 14-CR-00175-TEH-1, 2016 WL 3252779, at *2 (N.D. Cal. June 14, 2016). “Deliberative means that the document ‘must actually be related to the process by which policies are formulated.’” *Id.*

The purpose of Exemption 5 is “to prevent the disruption of a free flow of ideas, opinions, advice and frank discussions within agencies concerning their policies and programs. In furtherance of this objective the courts have allowed the government to withhold memoranda containing advice, opinions, recommendations and subjective analysis. **Factual material that does not reveal the deliberative process is not protected by this exemption.**” *Nat’l Wildlife Fed’n v. U.S. Forest Serv.*, 861 F.2d 1114, 1117 (9th Cir. 1988) (emphasis added). Moreover, this privilege may be overcome if the requester’s “need for the materials and need for accurate fact-finding overrule the government’s interest in non-disclosure.” *Id.*

The deliberative process privilege requires “1) the head of the agency that has control over the requested document must assert the privilege after personal consideration; 2) the head of the agency must state with particularity what information is subject to the privilege; and 3) the agency must supply the court with ‘precise and certain reasons’ for maintaining the confidentiality of the requested document.” *Bray v. United States*, No. CIV.A. 03-5150, 2005 WL 589754, at *1 (E.D. Pa. Mar. 14, 2005); *Muttitt v. Dep’t of State*, 926 F. Supp. 2d 284, 305 (D.D.C. 2013) (internal citations omitted).

Here, the NTSB has provided absolutely no information on what documents are being withheld to invoke the “deliberative process” privilege. The wholesale denial of my request without any invocation of the privilege is inappropriate, and runs contrary to the statute and guiding precedent on the deliberative process privilege.

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APPEAL – FOIA 2017-00048
Page 3

Exemption 7

Exemption 7 applies to “records or information compiled for **law enforcement purposes**”. 5 U.S.C. § 552(b)(7) (emphasis added). Even if this threshold requirement can be satisfied, “the government must still show that the record or information withheld falls within one of the six enumerated subsections of Exemption 7”. *Manna v. U.S. Dep’t of Justice*, 51 F.3d 1158, 1164 (3d Cir. 1995). Subsection A is the one invoked by the FOIA office here, which only applies if the government “could reasonably be expected to interfere with **enforcement proceedings**.” 5 U.S.C. § 552(b)(7)(A). To invoke 7(A), the government must show that “(1) a **law enforcement proceeding** is pending or prospective and (2) **release of the information could reasonably be expected to cause some articulable harm**.” *Manna v. U.S. Dep’t of Justice*, 51 F.3d 1158, 1164 (3d Cir. 1995) (emphasis added).

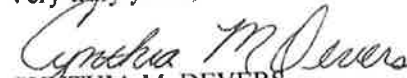
Exemption 7 applies to civil enforcement proceedings as your letter states; however, that is not relevant here, given the NTSB investigation is not a civil enforcement action. Therefore, Exemption 7 does not apply. Further, the NTSB has not articulated that the release of the information could reasonably be expected to cause some articulable harm.

My FOIA request sought the photographs, data, information, and other documents concerning the NTSB’s investigation of the accident which resulted in fatal injuries to Lauren Chase. (Ex. A). The NTSB’s letter incorrectly states that this material is available in the NTSB’s public docket. The public docket does not include the bulk of the information that is collected during the course of the accident investigation.

The family of Lauren Chase is prejudiced by this denial because the information gathered during the investigation, that did not necessarily make its way into the public docket, will not be available elsewhere and is important evidence in our investigation. For example, hundreds of photographs, notes, witness statements, documents, recordings, videos, records, and communications about the investigation may exist.

It is for these reasons that I appeal the denial of my FOIA request.

Very truly yours,


CYNTHIA M. DEVERS

CMD/lmt
W/attachments: Exs. A and B

EXHIBIT “A”

THE WOLK LAW FIRM

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

October 11, 2016

FREEDOM OF INFORMATION ACT REQUEST

Via Fax (240) 752-6257

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: NTSB Investigation No. ERA16LA078
Aircraft: Piper PA-46/500 TP
Reg. #: N891CR
D/A: December 24, 2015
P/A: Corinth, MS

Dear Sir/Madam:

We are investigating this matter on behalf of the family of Lauren Johnson Chase, who was fatally injured as a result of the December 24, 2015 accident involving a Piper PA-46/500 TP aircraft (N891CR) near Corinth, Mississippi.

Pursuant to the Freedom of Information Act, 5 U.S.C. § *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting certified copies of the following material relating to this accident and NTSB Investigation No. ERA16LA078:

- All original interview records before summarization or re-recording, recordings, notes, or other document concerning witness interviews;
- Aircraft logbooks, engine logbooks, squawk sheets, or other maintenance records concerning the accident aircraft;

Our practice is limited to aircraft accident litigation for plaintiffs.

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National Transportation Safety Board
October 11, 2016
Page 2

- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports";
- The Piper report of investigation;
- The Federal Aviation Administration report of investigation;
- All original field notes of NTSB and FAA Investigators;
- All original photographs, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
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- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
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- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All photographs documenting the wreckage and accident site;
- Cell phone tower records and data;
- Emergency locator transmitter records and data;
- Surveillance video;
- Toxicology records from FAA Civil Aerospace Medical Institute Forensic Toxicology Research Team;

THE WOLK LAW FIRM

National Transportation Safety Board
October 11, 2016
Page 3

- GPS metadata; and
- The complete investigation file for this accident.

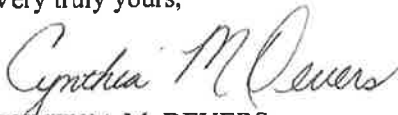
While a very small portion of the data collected during the investigation is available through General Microfilm, we are interested in the entire investigation file.

In order to determine my status to assess fees, my fee category is: **all others**.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or cdevers@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,


CYNTHIA M. DEVERS

CMD/lmt

TRANSMISSION VERIFICATION REPORT

TIME : 10/11/2016 18:01
NAME : WOLK LAW FIRM
FAX : 2155455252
TEL : 2155454220
SER.# : BRDJ8J866518

DATE, TIME	10/11 18:00
FAX NO./NAME	12407526257
DURATION	00:00:58
PAGE(S)	03
RESULT	OK
MODE	FINE
	ECM

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1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
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Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

October 11, 2016

FREEDOM OF INFORMATION ACT REQUEST

Via Fax (240) 752-6257

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: NTSB Investigation No. ERA16LA078
Aircraft: Piper PA-46/500 TP
Reg. #: N891CR
D/A: December 24, 2015
P/A: Corinth, MS

Dear Sir/Madam:

We are investigating this matter on behalf of the family of Lauren Johnson Chase, who

EXHIBIT “B”



National Transportation Safety Board
Washington, D.C. 20594

November 21, 2016

Ms. Cynthia Devers
Attorney
The Wolk Law Firm
1710 Locust Street
Philadelphia, PA 19103

Re: National Transportation Safety Board (NTSB)
Freedom of Information Act (FOIA) No. FOIA-2017-00048
December 24, 2015, Corinth, MS (ERA16LA078)

Dear Ms. Devers:

This letter is in response to your FOIA request for records from the above NTSB Investigation. This investigation is currently ongoing.

The Safety Board does not release records from pending investigations, because such release would impede the progress of the investigation and deter uninhibited deliberations and discussions regarding certain aspects of the investigation. As such, the Safety Board denies requests for records from pending investigations in accordance with Exemptions 5, and 7(A) of the FOIA, as explained below. Please note that, once the investigation is approaching conclusion, the Safety Board makes publicly available all information that was pertinent to each investigation in the form of a "public docket." This letter describes public dockets in detail, and provides instructions regarding how you can put your name and contact information on a list to receive the public docket information.

Congress has charged the Safety Board with investigating transportation accidents, determining the probable causes of the accidents, and issuing safety recommendations in order to prevent future accidents. 49 U.S.C. §§ 1131 (investigations) and 1135 (safety recommendations). Disclosure of records from a pending investigation would undermine the Safety Board's independence, objectivity, and effectiveness, which are critical to the Board's ability to investigate transportation accidents effectively. Preliminary records reflecting the Board's deliberative process are exempt from disclosure pursuant to Exemption 5 of the FOIA. See, e.g., *NLRB v. Sears, Roebuck & Co.*, 421 US 132, 148-51 (1975); *Ancient Coin Collectors Guild v. U.S. Dep't of State*, 2011 WL 1437419, *506 (D.C. Cir.) (citing *Wolfe v. Dep't of Health and Human Servs.*, 839 F.2d 768, 773 (D.C. Cir. 1988)(en banc)). The Safety Board cannot guarantee that preliminary materials, such as records from a pending investigation, would be accurate or complete; therefore, release of such information would result in confusion and compromise the Board's work. Similarly, material reflecting the Safety Board's deliberative process is exempt from disclosure in order to ensure the free flow of information during the course of the Board's investigations. *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977).

In addition, the FOIA does not require the Safety Board to release records when such release could interfere with the progress of an ongoing investigation. 5 U.S.C. § 552(b)(7)(A). At times, the Safety Board's investigations lead to other agencies' regulatory rulemaking. Courts have long recognized that the provisions of Exemption 7 apply to regulatory civil enforcement, not simply the enforcement of criminal statutes. *See, e.g., Rugiero v. United States Dep't of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (explaining that the "Court has adopted a per se rule" that applies not only to criminal enforcement actions, but to "records compiled for civil enforcement purposes as well"), *cert. denied*, 534 U.S. 1134 (2002); *Rural Hous. Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 & n.46 (D.C. Cir. 1974) (stating that "law enforcement purposes ... include both civil and criminal purposes"). Within this statutory framework, records from an ongoing Safety Board transportation investigation are exempt from disclosure under FOIA Exemption 7(A).

As mentioned above, at the conclusion of each investigation, the Safety Board makes investigative information available to the public in the form of "public dockets." These public dockets of information are voluminous and include all information that the investigators have deemed as pertinent to the investigation. In addition, when requesters seek all information from a specific investigation, the Safety Board's FOIA Office, in accordance with applicable case law, places such requests on a specific "track," and answers them on a first-in, first-out basis. *Open Am. v. Watergate Special Prosecution Force*, 547 F.2d 605, 614-616 (D.C. Cir. 1976). Therefore, the most efficient and timely way that requesters can receive information from an investigation is to place their names on a waiting list for receiving all information on the public docket for the particular investigation. I strongly recommend that you place your name on this list, and you will receive the information on the public docket once it becomes available.

The Safety Board's records facility, General Microfilm, Inc. (GMI), will record your name and contact information and, once the information in the public docket becomes available, GMI will send you all records from the public docket you seek for a fee. The contact information for General Microfilm, Inc. is as follows: 630 Files Cross Road, Martinsburg, West Virginia 25404, (304) 267-5830, <http://www.general-microfilm.com>. Public dockets are also available on the Safety Board's web site at <http://www.nts.gov/investigations/dms.html>.

In addition, with regard to aviation accident investigations, the Safety Board's public website also contains a database with information regarding most investigations. The public can use this database to determine the general status of an investigation, and obtain the preliminary, factual or probable cause report regarding the information from aviation investigations. You may search the aviation accident investigation database at <http://www.nts.gov/aviationquery/index.aspx>.

In summary, submitting a FOIA request is not the most expeditious way that you can receive the information you seek. Therefore, I recommend that you contact GMI and utilize the Safety Board's aviation accident database, as described above.

To the extent that I have denied your FOIA request, you may appeal my decision by writing to:
Mr. Thomas E. Zoeller, Managing Director, NTSB, 490 L'Enfant Plaza East, SW, Washington, DC
20594.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melba D. Moye", written in a cursive style.

Melba D. Moye
FOIA Officer

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>[Signature]</i></p>	
<p>1. Article Addressed to:</p> <p>National Transportation Safety Board Attn: Thomas Zoeller 440 L'Enfant Plaza SW WASHINGTON, DC 20544</p>		<p>B. Received by (Printed Name) <i>Brandon Berry</i></p> <p>C. Date of Delivery <i>12/22/16</i></p>	
<p>2. Article Number (Transfer from service label)</p> <p>9590 9403 0674 5196 5488 75</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>		<p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	

PS Form 3811, April 2015 PSN 7530-02-000-9053

Domestic Return Receipt



National Transportation Safety Board

Washington, DC 20594 | www.nts.gov

OFFICE OF THE MANAGING DIRECTOR

January 4, 2018

Cynthia M. Devers. Esq.
The Wolk Law Firm
1710-12 Locust Street
Philadelphia, PA 19103

Re: National Transportation Safety Board (NTSB)
Freedom of Information Act (FOIA)
Appeal No. 2017-00015-A
Request No. 2017-00048

Dear Ms. Devers:

The agency has reviewed your appeal and concludes that the FOIA Office properly invoked, at a minimum, Exemption 7(A). Exemption 7(A) applies to criminal proceedings, civil proceedings, and similar agency actions that indicate that a future law enforcement proceeding is reasonably likely. *See Gray v. U.S. Army Criminal Investigation Command*, 745 F. Supp. 2d 68, 73 (D.D.C. 2010) (holding that Exemption 7(A) applies to administrative disciplinary proceedings); *Goodrich Corp. v. EPA*, 593 F. Supp. 2d 184, 193 (D.D.C. 2009) (concluding that records related to EPA's classification of property were exempt because the agency identified enforcement proceedings that could result from the classification, though the classification itself was not an enforcement proceeding); *Judicial Watch, Inc. v. Rossotti*, 285 F. Supp. 2d 17, 30 (D.D.C. 2003) (holding that on-going audit and investigation into organization's tax-exempt status were subject to exemption 7(A)).

Exemption 7(A) also applies to investigations that prevent rather than punish violations of law. *Moorefeld v. U.S. Secret Serv.*, 611 F.2d 1021, 1025 (5th Cir. 1980) (concluding that Exemption 7(A) applied to the Secret Service's continuing investigation of threats to the President because "enforcement proceedings correspond with law enforcement purposes, and such purposes include the prevention as well as the detection and punishment of violations of the law").

The agency withholding records pursuant to Exemption 7(A) need not be the agency contemplating or conducting the law enforcement proceeding. *See Seized Property Recovery Corp. v. U.S. Customs & Border Prot.*, 502 F. Supp. 2d 50, 62-63 (D.D.C. 2007) (concluding that CBP records were properly withheld because another agency, Immigration & Customs Enforcement, was investigating subjects in records); *Butler v. U.S. Dep't of Air Force*, 888 F. Supp. 174, 180 (D.D.C. 1995) (upholding Air Force's assertion of Exemption 7(A) based on ongoing state murder investigation);

Cudzich v. INS, 886 F. Supp. 101, 106–07 (D.D.C. 1995) (withholding records related to other agencies' investigations, even though INS investigation was closed).

Whether laws or regulations were violated is always a potential issue in an NTSB investigation. NTSB investigations may involve (1) issues about the efficacy of existing regulations and oversight of the transportation industry, in response to which the NTSB could develop safety recommendations; or (2) regulatory or criminal violations, for which other authorities would initiate civil or criminal proceedings during or after an NTSB investigation. In either circumstance, the NTSB would be justified in deciding that a law enforcement proceeding is "reasonably anticipated." *Sussman*, 494 F.3d at 1114.

An agency may assert Exemption 7(A) when disclosure can reasonably be expected to: (1) harm the agency's ability to obtain all relevant information or prematurely reveals issues that a complete investigation would resolve, *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 306 F. Supp. 2d 58, 75-76 (D.D.C. 2004); (2) create a chilling effect on potential witnesses and sources of information; *Manna v. U.S. Dep't of Justice*, 51 F.3d 1158, 1164 (3d Cir. 1995); or (3) lead to destruction, fabrication, or alteration of relevant evidence, *Boyd v. U.S. Dep't of Justice*, 475 F.3d 381, 386 (D.C. Cir. 2007).

Prematurely disclosing information obtained from investigative parties could chill party participation. See *Juarez v. DOJ*, 518 F.3d 54, 58 (D.C. Cir. 2008). Moreover, releasing information before the agency determines what information is relevant and appropriate for the public docket "could reveal premature and/or unfounded questions that complete investigation might resolve." *Judicial Watch, Inc.*, 306 F. Supp. 2d at 76; accord *Swan v. SEC*, 96 F.3d 498, 500 (D.C. Cir. 1996) ("The Commission's records reveal what the Commission staff thought important and worth recording and, by negative implication, what the staff thought unimportant. The records could reveal much about the focus and scope of the Commission's investigation, and are thus precisely the sort of information exemption 7(A) allows an agency to keep secret.").

Exemption 7(A)'s applicability is determined generically to categories of documents. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 230 (1978). It is well-settled that an agency is not required to provide a *Vaughn* index in its initial denial of a FOIA request, or in an administrative appeal. *Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180, 187 n.5 (D.C. Cir. 2013); *Judicial Watch, Inc. v. Clinton*, 880 F. Supp. 1, 11 (D.D.C. 1995) ("Agencies need not provide a *Vaughn* index until ordered by a court after the plaintiff has exhausted the administrative process."). At the administrative level, the agency is required to inform the requester of its "determination and the reasons therefor." 5 U.S.C. §

552(a)(6)(A)(i)(I). For the foregoing reasons, the agency has determined at this time that the records you requested may be withheld pursuant to Exemption 7(A).¹

Pursuant to 5 U.S.C. § 552(a)(4)(B) and (6)(A), my decision is reviewable in the district court of the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Jones", with a stylized flourish at the end.

Dennis Jones
Managing Director

¹ Because the agency relies on the generic applicability of Exemption 7(A), it will not discuss the page-by-page applicability of Exemption 5 at this time. Nonetheless, many of the records you requested may be withheld pursuant to Exemption 5, which incorporates the deliberative process privilege.

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

May 1, 2018

FREEDOM OF INFORMATION ACT REQUEST

Via Fax (240) 752-6257

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Accident No. ERA16LA078
PA-46 (N891CR)
12/24/2015, Corinth, MS**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting certified copies of the following material relating to the Piper PA-46 aircraft crash which occurred on December 24, 2015 near Corinth, Mississippi:

- All recordings, notes, or other document concerning witness interviews;
- Maintenance records;
- Aircraft logbooks;
- Engine logbooks;
- Videos, photographs, notes, data, or other document concerning the Piper Flight Tests discussed in the NTSB Docket Report;
- Videos, photographs, notes, data or other documents concerning the Videos provided by Piper Aircraft referenced in the NTSB Docket;
- Videos, photographs, notes, data or other documents concerning the Avidyne Entegra data referenced in the NTSB Docket;

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

AIRLAW

FOIA Request

Page 2

- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports";
- The Piper Aircraft report of its investigation;
- All original field notes of NTSB Investigators;
- All original photos, photographs, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- Surveillance videos;
- The complete investigation file for this accident; and
- All recordings, notes, photographs, videos, reports, or other documents or data concerning the aircraft wreckage and any examination of the aircraft.

In order to determine my status to assess fees, my fee category is: **all others**.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or cdevers@airlaw.com.



FOIA Request
Page 3

Preferred format is paper or electronic, whichever is more convenient for you. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Cynthia M. Devers".

CYNTHIA M. DEVERS

CMD/lmt

TRANSMISSION VERIFICATION REPORT

TIME : 05/01/2018 12:48
NAME : WOLK LAW FIRM
FAX : 2155455252
TEL : 2155454220
SER.# : BROJ6J866518

DATE, TIME
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THE WOLK LAW FIRM
Attorneys at Law

1710-12 Locust Street
Philadelphia, PA 19103
215/545-4220 (phone)
215/545-5252 (fax)

TELECOMMUNICATIONS COVER PAGE

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

COMPANY: NATIONAL TRANSPORTATION SAFETY BOARD

ATTN: FOIA Requester Service Center, CIO-40

FROM: Cynthia M. Devers

RE: *FOIA Request*

DATE: 5/1/18 NO.: (240) 752-6257

TOTAL NUMBER OF PAGES (including cover page): 4

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE TELEPHONE
215/545-4220.

CONFIDENTIALITY NOTICE

THE WOLK LAW FIRM

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

July 11, 2018

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

National Transportation Safety Board
Attention: Chief FOIA Officer, Angel Santa
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: Re: **APPEAL – FOIA 2018-00299**
 Est. of Lauren Chase
 Initial Request Date: 5/1/18
 NTSB Received Date: 5/1/18
 D/A: December 24, 2015
 NTSB ID No. ERA16LA078

Dear Sir or Madam:

Please allow this letter to serve as an appeal from of our FOIA request No. 2018-00299. On May 1, 2018, my office submitted a FOIA request concerning the NTSB's investigation of the accident which fatally injured Lauren Chase. (Ex. A). The NTSB received the request on the same date. (Ex. B).

Since the time to respond to my FOIA request has passed, we have exhausted the administrative remedies and this appeal is timely.

Plaintiffs are prejudiced by the lack of response to this request because the information gathered during the investigation, that did not necessarily make its way into the public docket may not be available elsewhere and is important evidence in our investigation. For example, hundreds of photographs, notes, witness statements, documents, recordings, videos, records, and

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

National Transportation Safety Board
July 11, 2018
Page 2

communications about the investigation may exist. This information is further important for the furtherance of public safety.

It is for these reasons that I submit this appeal.

Very truly yours,


CYNTHIA M. DEVERS

CMD/lmt
W/attachments: Exs. A, B

EXHIBIT “A”

THE WOLK LAW FIRM

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

May 1, 2018

FREEDOM OF INFORMATION ACT REQUEST

Via Fax (240) 752-6257

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Accident No. ERA16LA078
PA-46 (N891CR)
12/24/2015, Corinth, MS**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting certified copies of the following material relating to the Piper PA-46 aircraft crash which occurred on December 24, 2015 near Corinth, Mississippi:

- All recordings, notes, or other document concerning witness interviews;
- Maintenance records;
- Aircraft logbooks;
- Engine logbooks;
- Videos, photographs, notes, data, or other document concerning the Piper Flight Tests discussed in the NTSB Docket Report;
- Videos, photographs, notes, data or other documents concerning the Videos provided by Piper Aircraft referenced in the NTSB Docket;
- Videos, photographs, notes, data or other documents concerning the Avidyne Entegra data referenced in the NTSB Docket;

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

AIRLAW

FOIA Request

Page 2

- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports";
- The Piper Aircraft report of its investigation;
- All original field notes of NTSB Investigators;
- All original photos, photographs, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- Surveillance videos;
- The complete investigation file for this accident; and
- All recordings, notes, photographs, videos, reports, or other documents or data concerning the aircraft wreckage and any examination of the aircraft.

In order to determine my status to assess fees, my fee category is: **all others**.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or cdevers@airlaw.com.

THE WOLK LAW FIRM

ATTORNEYS AT LAW

FOIA Request
Page 3

Preferred format is paper or electronic, whichever is more convenient for you. Thank you.

Very truly yours,



CYNTHIA M. DEVERS

CMD/lmt

TRANSMISSION VERIFICATION REPORT

TIME : 05/01/2018 12:48
NAME : WOLK LAW FIRM
FAX : 2155455252
TEL : 2155454220
SER.# : BRDJ8J866518

DATE, TIME	05/01 12:46
FAX NO./NAME	12407526257
DURATION	00:01:14
PAGE(S)	04
RESULT	OK
MODE	FINE
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THE WOLK LAW FIRM
Attorneys at Law

1710-12 Locust Street
Philadelphia, PA 19103
215/545-4220 (phone)
215/545-5252 (fax)

TELECOMMUNICATIONS COVER PAGE

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

COMPANY: NATIONAL TRANSPORTATION SAFETY BOARD

ATTN: FOIA Requester Service Center, CIO-40

FROM: Cynthia M. Devers

RE: *FOIA Request*

DATE: 5/1/18 NO.: (240) 752-6257

TOTAL NUMBER OF PAGES (including cover page): 4

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE TELEPHONE
215/545-4220.

CONFIDENTIALITY NOTICE

EXHIBIT “B”

PRIVACY ACT STATEMENT: This information is solicited under authority of the Privacy Act of 1974. Furnishing the information to create your account is voluntary, but failure to do so may result in disapproval of your electronic FOIA request. The purpose of this information is to facilitate timely receipt of your request and enable online tracking.

Request - **FOIA-2018-00299**

Create Appeal (CreateAppeal.aspx?reqno=FOIA-2018-00299)
✉ Inbox (0) ✎ Compose Message ▲ Sent Messages
Withdraw Request ← Back (RequestStatus.aspx)

Requester Details

To modify request details please update your requester profile or contact the our office for assistance.

Ms. Cynthia Devers

Attorney
 The Wolk Law Firm
 1710 Locust Street
 Philadelphia, PA 19103
 Phone (215) 545-4220
 cdevers@airlaw.com

Requester Default Category: Law Firm

Request Details

Date Requested	05/01/2018
Received Date	05/01/2018
Request Status	Assigned for Processing

General Information

Requester Category

Law Firm



Mailing Address

Address 1	1710 Locust Street	Address 2	
City	Philadelphia	State	Pennsylvania <input type="checkbox"/>
Country	United States <input type="checkbox"/>	Zip Code	19103

Detail Description Of Request

Include Date/Location	Any and all records All copies of NTSB requests for records, recordings or other material from other government	
Date Range for Record Search: From (mm/dd/yyyy)		To (mm/dd/yyyy)
Consent	Attachment	
Proof of Identity	Attachment	

Request Fees

\$25 Minimum/No fee for appeal

Enter Amount Willing To Pay (\$)	25.00
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Fee Waiver Requested	<input type="checkbox"/>
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If Waiver
Request Enter
Reason

Willing to Pay All Fees	<input type="checkbox"/>
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Billing Address

Street1

1710 Locust Stree

Street2

City

Philadelphia

State

Pennsylvania

Country

United States

Zip Code

19103

NTSB Accident DetailsNTSB
Accident
Number

ERA16LA078

Accident Date
(mm/dd/yyyy)

12/24/2015

Accident
Location
(City/State)

Corinth, MS

Mode

Aviation

Review request for accuracy



Name

Company

Phone

Email Address

999-999-9999

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY																	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>National Transportation Safety Board Attention: Chief FOIA Officer, Angel Santa 490 L'Enfant Plaza, S.W. Washington, DC 20594-2000</p>  <p>9590 9402 2094 6132 0742 86</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>X </p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>NHSB FOIA 7/16/18</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>																	
<p>2. Article Number (Transfer from service label)</p> <p>7016 2070 0000 5205 8083</p>		<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Mail Restricted Delivery</td> <td></td> </tr> </table>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Mail		<input type="checkbox"/> Mail Restricted Delivery	
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PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt



National Transportation Safety Board

Washington, DC 20594 | www.nts.gov

OFFICE OF THE MANAGING DIRECTOR

August 13, 2018

Cynthia M. Devers, Esq.
The Wolk Law Firm
1710-12 Locust Street
Philadelphia, PA 19103

Re: National Transportation Safety Board (NTSB)
Freedom of Information Act (FOIA)
Appeal No. 2018-00009-A (FOIA Request 2018-00299)

Dear Ms. Devers:

Your FOIA request, dated May 1, 2018, is being processed by the NTSB's FOIA Requester Service Center (FOIA RSC). In *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976), the D.C. Circuit held that a good faith attempt to process FOIA requests as quickly as possible by "assigning all requests on a first-in, first-out basis" complies with FOIA when the agency "is deluged with a volume of requests for information vastly in excess of that anticipated by Congress, when the existing resources are inadequate to deal with the volume of such requests within the time limits . . . and when the agency can show it 'is exercising due diligence' in processing the requests."

The NTSB has been inundated with FOIA requests and is exercising due diligence in processing backlogged requests on a first-in, first-out basis. Your request effectively seeks all records related to accident investigation ERA16LA078. Thus far, the agency has identified 587 pages responsive to your request. In accordance with the agency's multi-track processing system, your request is being processed on a first-in, first-out basis within the track for requests that involve voluminous records, sensitive records, or numerous or lengthy consultations. 49 C.F.R. § 801.20(a). There are several requests for this accident that precede yours. When the FOIA RSC processes the first of these requests, it will also respond to all similar requests, including yours.

The reasons stated in your appeal do not warrant moving your request ahead of the many other FOIA requests received by the Safety Board. You incorrectly assert that you have "exhausted the administrative remedies," and as a result, are entitled to faster processing. The FOIA permits an administrative appeal of an "adverse determination" or a "determination of whether to provide expedited processing." 5 U.S.C. §§ 552(a)(6)(A)(i)(III)(aa), (a)(6)(E)(ii)(II). The FOIA RSC has not yet made a decision on your request and you did not request expedited processing. Thus, your request is still pending in the administrative process, the concept of exhaustion does not apply, and you've asserted no justification that warrants deviating from the agency's first-in, first-out approach.

Sincerely,

Dennis Jones
Managing Director

EXHIBIT “D”

**FARRAR
NTSB No. ERA16FA141
D/A March 26, 2016
Location: Charleston, WV**

Page Number	Request	Date	Action
D.1-2	NTSB Investigation File	9/12/18	Initial Request Submitted
D.3-4	FOIA 2018-00465	9/14/18	Acknowledged/Assigned Number
D.5-6	FOIA 2018-00465	9/28/18	Denied
D.7-9	Appeal	10/1/18	Submitted
D.10	FOIA 2019-00001-A	10/1/18	Acknowledged/Assigned Number

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

September 12, 2018

FREEDOM OF INFORMATION ACT REQUEST

Via Email

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Accident No. ERA16FA141
Cessna 172 (N6238D)
March 26, 2016
Charleston, WV**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting certified copies of the following material relating to the Cessna 172 aircraft crash which occurred on March 26, 2016 near Charleston, West Virginia:

- All recordings, notes, or other document concerning witness interviews;
- Maintenance records;
- Aircraft logbooks;
- Engine logbooks;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports";
- The Cessna Aircraft report of its investigation;
- All original field notes of NTSB Investigators;
- All original photos, photographs, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

AIRLAW

FOIA Request

Page 2

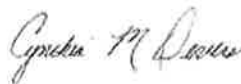
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- Surveillance videos;
- All communications with any person or party are part of this investigation;
- The complete investigation file for this accident; and
- All recordings, notes, photographs, videos, reports, or other documents or data concerning the aircraft wreckage and any examination of the aircraft.

In order to determine my status to assess fees, my fee category is: **all others**.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or cdevers@airlaw.com.

Preferred format is paper or electronic, whichever is more convenient for you. Thank you.

Very truly yours,



CYNTHIA M. DEVERS

CMD/sc



National Transportation Safety Board
Washington, D.C. 20594

September 14, 2018

Mrs. Stacy Charles
The Wolk Law Firm
1710 Locust Street
Philadelphia, PA 19103

Re: Freedom of Information Act (FOIA) Request
FOIA-2018-00465

Dear Mrs. Charles:

This acknowledges receipt of your FOIA request of September 12, 2018, concerning an aviation accident that occurred on March 26, 2016, in Charleston, WV.

Your request will be processed in accordance with your inquiry. To track the status of your request go to the NTSB website and click FOIA Request on the main page. This will take you to the Public Access Link (PAL) Web Portal which provides a secure method of submitting requests and obtaining request status updates over the internet. Please refer to the FOIA number listed above exactly as it is to make your inquiry.

We are experiencing a backlog in processing FOIA requests and there may be a delay in processing your request. Requests for "any and all" records may add to the delay in the process as there may be voluminous documents to search/process. Please note, once the accident investigation is completed a public accident docket is made available on the NTSB website at <https://dms.nts.gov/pubdms/>. The public docket may contain factual reports, group chairman reports, and other records pertinent to the accident investigation.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the NTSB, FOIA Requester Service Center at (202) 314-6540. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland, 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

NTSB, FOIA Requester Service Center
490 L'Enfant Plaza, S.W.
Washington, D.C. 20594
(202) 314-6540



**National Transportation Safety Board
Washington, D.C. 20594**

September 28, 2018

Mrs. Stacy Charles
Paralegal
The Wolk Law Firm
1710 Locust Street
Philadelphia, PA 19103

Re: National Transportation Safety Board (NTSB)
Freedom of Information Act (FOIA) No. FOIA-2018-00465
March 26, 2016, Charleston, WV (ERA16FA141)

Dear Mrs. Charles:

This letter responds to your FOIA request for information regarding the above accident. In your request you seek any and all records. Many of the documents responsive to your request under the FOIA involve documents and records that are included in what is known as our public docket. The public docket contains Board reports and supporting documents and is available on-line at <https://dms.nts.gov/pubdms/>.

Should you wish to receive the public docket in hard copy, you may contact General Microfilm Incorporated (GMI) directly at:

GMI
632 Files Cross Road
Martinsburg, West Virginia 25404
(304) 267-5830
(304) 264-0862 (Fax)
E-mail address: genmicrofm@aol.com
Web address: <http://www.general-microfilm.com>

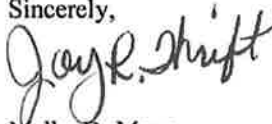
In addition, with regard to aviation accident investigations, the Safety Board's public website also contains a database with information regarding most investigations. The public can use this database to determine the general status of an investigation, and obtain the preliminary, factual or probable cause report regarding the information from aviation investigations. You may search the aviation accident investigation database at <https://www.nts.gov/layouts/nts.aviation/index.aspx>.

Other than this information there are no other records responsive to your request.

You may contact Mr. Brandon Berry, the analyst who processed your request, at (202) 314-6695, as well as our FOIA Public Liaison at (202) 314-6540 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the National Transportation Safety Board, Attn: Mr. Dennis Jones, Managing Director, 490 L'Enfant Plaza, SW, Washington, D.C. 20594. Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request.

Sincerely,



Melba D. Moye
FOIA Officer



THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

October 1, 2018

Freedom of Information Act Request - Appeal

Via NTSB Website

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: FOIA Request No. 2018-00465

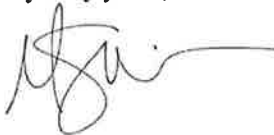
Dear Sir/Madam:

Please allow this letter to serve as an appeal from of our FOIA request No: 2018-00465. On September 12, 2018, my office submitted a FOIA request through the NTSB FOIA request portal concerning the NTSB's investigation of the accident which injured Arrin Farrar. (Ex. A). Since the time to respond to my FOIA request has passed, we have exhausted the administrative remedies and this appeal is timely.

Plaintiffs are prejudiced by the lack of response to this request because the information gathered during the investigation, that did not necessarily make its way into the public docket may not be available elsewhere and is important evidence in our investigation. For example, hundreds of photographs, notes, witness statements, documents, recordings, videos, records, and communications about the investigation may exist. This information is further important for the furtherance of public safety.

It is for these reasons that I submit this appeal.

Very truly yours,



MICHAEL S. MISKA

MSM/sc
Enclosure

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E mail, airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

September 12, 2018

FREEDOM OF INFORMATION ACT REQUEST

Via Email

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Accident No. ERA16FA141
Cessna 172 (N6238D)
March 26, 2016
Charleston, WV**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting certified copies of the following material relating to the Cessna 172 aircraft crash which occurred on March 26, 2016 near Charleston, West Virginia:

- All recordings, notes, or other document concerning witness interviews;
- Maintenance records;
- Aircraft logbooks;
- Engine logbooks;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports";
- The Cessna Aircraft report of its investigation;
- All original field notes of NTSB Investigators;
- All original photos, photographs, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;

EXHIBIT

A

Our practice is limited to aircraft accident litigation for plaintiffs.



FOIA Request

Page 2

- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- Surveillance videos;
- All communications with any person or party are part of this investigation;
- The complete investigation file for this accident; and
- All recordings, notes, photographs, videos, reports, or other documents or data concerning the aircraft wreckage and any examination of the aircraft.

In order to determine my status to assess fees, my fee category is: **all others**.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or cdevers@airlaw.com.

Preferred format is paper or electronic, whichever is more convenient for you. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Cynthia M. Devers".

CYNTHIA M. DEVERS

CMD/sc

From: foia@ntsb.gov
To: Stacy Charles
Subject: Request Acknowledgement by NTSB
Date: Monday, October 01, 2018 2:24:52 PM

Dear Stacy Charles,

Request Number FOIA-2019-00001-A has been assigned to the request you submitted via the NTSB FOIA Portal.

In all future correspondence regarding this request please reference case number FOIA-2019-00001-A.

Regards,

NTSB

Total Control Panel

[Login](#)

To: scharles@airlaw.com

Message Score: 70

High (60): Fail

From: postmaster@ains-inc.com

My Spam Blocking Level: Custom

Medium (75): Pass

Low (90): Pass

[Block this sender](#)

Custom (82): Pass

[Block ains-inc.com](#)

This message was delivered because the content filter score did not exceed your filter level.

EXHIBIT “E”

**GENTRY
NTSB No. ERA17FA317
D/A September 8, 2017
Location: Medford, NJ**

Page Number	Request	Date	Action
E.1-2	NTSB Investigation File	7/10/18	Initial Request
E.3-5	FOIA 2018-00371	7/19/18	Acknowledged/Assigned Number
E.6-8	FOIA 2018-00371	7/19/18	Denied
E.9-12	Appeal	8/14/18	Submitted/Acknowledged/Assigned Number
E.13	FOIA 2018-00011-A	9/11/18	Denied

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

July 10, 2018

FREEDOM OF INFORMATION ACT REQUEST

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Estate of Troy Lee Gentry
Schweizer 269C, N204HF
Location: Medford, New Jersey
Date of Accident: September 8, 2017
NTSB I.D. No. ERA17FA317**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above captioned crash, NTSB ID No. ERA17FA317:

- All original field notes of NTSB Investigators;
- All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."

Our practice is limited to aircraft accident litigation for plaintiffs.

NTSB - FOIA
July 10, 2018
Page Two

- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All photographs documenting the wreckage, including all components, prior to removal of these components from the wreckage;
- The Flying W Airport surveillance video(s); and
- The complete investigation file of Investigator, Brian C. Rayner, including but not limited to notes, photographs and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: all others.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or mmiska@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,



MICHAEL S. MISKA

MSM/vg



National Transportation Safety Board
Washington, D.C. 20594

July 19, 2018

Mrs. Victoria Greco
The Wolk Law Firm
1710-12 Locust Street
Philadelphia, PA 19103

Re: Freedom of Information Act (FOIA) Request
FOIA-2018-00371

Dear Mrs. Greco:

This acknowledges receipt of your FOIA request of July 10, 2018, and you are seeking the following material relating to NTSB ID No. ERA17FA317:

1. All original field notes of NTSB Investigators;
2. All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
3. All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, in any format, printed, digital, microfiche or photographic;
4. All original interview records, before summarization or re-recording;
5. Signatory list of all participants as Party Members to the investigation;
6. All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, - Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
7. All copies of NTSB requests for records, recordings or other material from other government agencies, companies or organizations associated with the investigation;

8. All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
9. All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
10. All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
11. All photographs documenting the wreckage, including all components, prior to removal of these components from the wreckage;
12. The Flying W Airport surveillance video(s); and the complete investigation file of Investigator, Brian C. Rayner, including but not limited to notes, photographs and any other materials relating to this accident. Teardown or laboratory reports.”

Your request will be processed in accordance with your inquiry. To track the status of your request go to the NTSB website and click FOIA Request on the main page. This will take you to the Public Access Link (PAL) Web Portal which provides a secure method of submitting requests and obtaining request status updates over the internet. Please refer to the FOIA number listed above exactly as it is to make your inquiry.

We are experiencing a backlog in processing FOIA requests and there may be a delay in processing your request. Requests for “any and all” records may add to the delay in the process as there may be voluminous documents to search/process. Please note, once the accident investigation is completed a public accident docket is made available on the NTSB website at <https://dms.nts.gov/pubdms/>. The public docket may contain factual reports, group chairman reports, and other records pertinent to the accident investigation.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the NTSB, FOIA Requester Service Center at (202) 314-6540. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland, 20740-6001; e-mail at ogis@nara.gov;

telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

NTSB, FOIA Requester Service Center
490 L'Enfant Plaza, S.W.
Washington, D.C. 20594
(202) 314-6540



National Transportation Safety Board
Washington, D.C. 20594

July 19, 2018

Ms. Victoria Greco
The Wolk Law Firm
1710-12 Locust Street
Philadelphia, PA 19103

Re: National Transportation Safety Board (NTSB)
Freedom of Information Act (FOIA) No. FOIA-2018-00371
September 8, 2017, Medford, NJ (ERA17FA317)

Dear Ms. Greco:

This letter is in response to your FOIA request for records from the above NTSB Investigation. This investigation is currently ongoing.

The Safety Board does not release records from pending investigations, because such release would impede the progress of the investigation and deter uninhibited deliberations and discussions regarding certain aspects of the investigation. As such, the Safety Board denies requests for records from pending investigations in accordance with Exemptions 5, and 7(A) of the FOIA, as explained below. Please note that, once the investigation is approaching conclusion, the Safety Board makes publicly available all information that was pertinent to each investigation in the form of a "public docket." This letter describes public dockets in detail.

Congress has charged the Safety Board with investigating transportation accidents, determining the probable causes of the accidents, and issuing safety recommendations in order to prevent future accidents. 49 U.S.C. §§ 1131 (investigations) and 1135 (safety recommendations). Disclosure of records from a pending investigation would undermine the Safety Board's independence, objectivity, and effectiveness, which are critical to the Board's ability to investigate transportation accidents effectively. Preliminary records reflecting the Board's deliberative process are exempt from disclosure pursuant to Exemption 5 of the FOIA. *See, e.g., NLRB v. Sears, Roebuck & Co.*, 421 US 132, 148-51 (1975); *Ancient Coin Collectors Guild v. U.S. Dep't of State*, 2011 WL 1437419, *506 (D.C. Cir.) (citing *Wolfe v. Dep't of Health and Human Servs.*, 839 F.2d 768, 773 (D.C. Cir. 1988)(en banc)). The Safety Board cannot guarantee that preliminary materials, such as records from a pending investigation, would be accurate or complete; therefore, release of such information would result in confusion and compromise the Board's work. Similarly, material reflecting the Safety Board's deliberative process is exempt from disclosure in order to ensure the free flow of information during the course of the Board's investigations. *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977).

In addition, the FOIA does not require the Safety Board to release records when such release could interfere with the progress of an ongoing investigation. 5 U.S.C. § 552(b)(7)(A). At times, the Safety Board's investigations lead to other agencies' regulatory rulemaking. Courts have long recognized that the provisions of Exemption 7 apply to regulatory civil enforcement, not simply the enforcement of criminal statutes. See, e.g., Rugiero v. United States Dep't of Justice, 257 F.3d 534, 550 (6th Cir. 2001) (explaining that the "Court has adopted a per se rule" that applies not only to criminal enforcement actions, but to "records compiled for civil enforcement purposes as well"), cert. denied, 534 U.S. 1134 (2002); Rural Hous. Alliance v. United States Dep't of Agriculture, 498 F.2d 73, 81 & n.46 (D.C. Cir. 1974) (stating that "law enforcement purposes ... include both civil and criminal purposes"). Within this statutory framework, records from an ongoing Safety Board transportation investigation are exempt from disclosure under FOIA Exemption 7(A).

As mentioned above, at the conclusion of each investigation, the Safety Board makes investigative information available to the public in the form of "public dockets." These public dockets of information are voluminous and include all information that the investigators have deemed as pertinent to the investigation. In addition, when requesters seek all information from a specific investigation, the Safety Board's FOIA Office, in accordance with applicable case law, places such requests on a specific "track," and answers them on a first-in, first-out basis. Open Am. v. Watergate Special Prosecution Force, 547 F.2d 605, 614-616 (D.C. Cir. 1976). Therefore, the most efficient and timely way that requesters can receive information from an investigation is to periodically review the NTSB website for the public docket (<https://dms.nts.gov/pubdms/>).

In addition, with regard to aviation accident investigations, the Safety Board's public website also contains a database with information regarding most investigations. The public can use this database to determine the general status of an investigation, and obtain the preliminary, factual or probable cause report regarding the information from aviation investigations. You may search the aviation accident investigation database at <https://www.nts.gov/layouts/nts.aviation/index.aspx>.

You may contact Chaquonna Price, the analyst who handled your request, as well as our FOIA Public Liaison at 202-314-6540 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: OGIS, NARA, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal by writing to the NTSB, Attn: Mr. Dennis Jones, Managing Director, 490 L'Enfant Plaza, SW, Washington, D.C. 20594. Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Melba D. Moye".

Melba D. Moye
FOIA Officer

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

August 14, 2018

Via Email

Mr. Dennis Jones, Managing Director
National Transportation Safety Board
490 L'Enfant Plaza East, SW
Washington, DC 20594

**Re: Freedom of Information Act (FOIA) Request 2018-00371
September 8, 2017, Medford, NJ (ERA17FA317)
APPEAL**

Dear Director Jones:

This letter is an appeal of the denial of the request listed above, which I am enclosing for your convenience. I understand that the Board will not release any information from pending investigations; however, I am specifically requesting the Board to preserve all data collected during the investigation process for a reasonable period after the investigation is finished. When the investigation is concluded and the public docket is released, please provide me with the preserved material that is requested at that time

The denial of my FOIA request to preserve information cites Exemption 7(A). Exemption 7(A) precludes disclosure only to the extent that it would impede an active investigation through premature disclosure. 5 USC § 552(b)(7)(A). Reference to Exemption 7(A) is misplaced because I am **not** seeking premature disclosure of any materials. I am requesting that materials be **preserved for disclosure at the proper time** (i.e. – **after** the release of the public docket).

The denial of my FOIA request also asserts Exemption 5 of FOIA, which implicates “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 USC § 552(b)(5). Exemption 5 does not apply to the material I requested, which will be sought only **after** the investigation is complete. The Department of Justice FOIA Guidance articulates the metes and bounds of Exemption 5:

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THE WOLK LAW FIRM

AIRLAW

Mr. Dennis Jones, Managing Director
August 14, 2018
Page 2

The fifth exemption may be the most difficult FOIA exemption to understand and apply. For example, the exemption protects the policy making process, but it does not protect purely factual information related to the policy process. Factual information must be disclosed unless it is inextricably intertwined with protected information about an agency decision.

Protection for the decision making process is appropriate only for the period while decisions are being made. Thus, the fifth exemption has been held to distinguish between documents that are pre-decisional and therefore may be protected, and those which are post-decisional and therefore not subject to protection. Once a policy is adopted, the public has a greater interest in knowing the basis for the decision.

Citizen's Guide to the Freedom of Information Act and the Privacy Act of 1974. § VI. (F.) *available at* 1993 WL 434640 (D.O.J.) (emphasis added).

The letter denying my request to merely save this information underscores the fact that Exception 5 does not apply. The denial states:

As mentioned above, at the conclusion of each investigation, the Safety Board makes investigative information available to the public in the form of "public dockets." These public dockets of information are voluminous and include all information that the investigators have deemed as pertinent to the investigation.

(Moye ltr. Jan. 18, 2015).

THE WOLK LAW FIRM

AIRLAW

Mr. Dennis Jones, Managing Director

August 14, 2018

Page 3

Regardless of what the investigator deems pertinent, **factual** information that is not part of the public docket should not be withheld, particularly after the investigation is complete. I understand that it is the policy of the NTSB to discard or destroy information not released in the public docket at the conclusion of the investigation – it is this information that I seek to have preserved. The disclosure of this information is proper under FOIA **after** the conclusion of the investigation and its withholding does not meet the requirements of Exemption 5. Moreover, the participation of non-government parties to the investigation destroys any “inter-agency or intra-agency” protection that may have been afforded to many of these documents by Exemption 5.

While the denial of my request refers me to General Microfilm for the public docket, as explained above, my request was not limited to docket materials. For example, the docket may include only a handful of photographs of the accident scene, while hundreds of photographs are typically taken by investigators. I am specifically seeking more factual information than that which the investigator has “deemed as pertinent to the investigation” and included in the docket.

It is for these reasons that I appeal the denial of the FOIA request listed above. Quite simply, at this point in time, I am requesting that all information be **preserved** and not disclosed. At the conclusion of the above-listed investigation I will diligently review the public docket and may request factual information that was not released in the docket. Please preserve all such factual information.

Very truly yours,



MICHAEL S. MISKA

MSM/vg

Enclosure

From: foia@ntsb.gov
To: Vicki Greco
Subject: Request Acknowledgement by NTSB
Date: Tuesday, August 14, 2018 10:05:30 AM

Dear Victoria Greco,

Case Number FOIA-2018-00011-A has been assigned to the request you submitted with temporary case number [REQUEST_TEMP_CASENUMBER].

In all future correspondence regarding this request please reference case number FOIA-2018-00011-A.

Regards,

NTSB



National Transportation Safety Board

490 L'Enfant Plaza East SW
Washington, DC 20594 | www.ntsb.gov
OFFICE OF THE MANAGING DIRECTOR

September 11, 2018

Michael A. Miska, Esq.
The Wolk Law Firm
1710-12 Locust Street
Philadelphia, PA 19103

Re: National Transportation Safety Board (NTSB)
Freedom of Information Act (FOIA) Request 2018-00371
Appeal No. 2018-00011-A

Dear Mr. Miska:

We write in response to your letter dated August 14, 2018, in which you state that you are appealing your FOIA Request 2018-00371. However, you have not raised a proper issue in your FOIA appeal. You request only that the agency preserve records until it concludes its investigation. The FOIA, however, only governs producing or withholding records. It is clear that the FOIA “does not obligate agencies to create or retain documents.” *Schoenman v. FBI*, 573 F. Supp. 2d 119, 140 (D.D.C.2008) (quoting *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980)). The NTSB follows established records retention policies and procedures and does not deviate from those procedures in response to FOIA requests or other accident-specific requests.

Pursuant to 5 U.S.C. § 552(a)(4)(B) and (6)(A), my decision is reviewable in the district court of the United States.

Sincerely,

Dennis Jones
Managing Director

EXHIBIT “F”

**GORDON
NTSB No. ERA16LA195
D/A May 27, 2016
Location: Edgewater, NJ**

Page Number	Request	Date	Action
F.1-2	NTSB Investigation File	9/14/18	Initial Request
F.3	FOIA 2018-00463	9/14/18	Acknowledged/Assigned Number
F.4-5	Appeal	12/5/18	Submitted/Acknowledged
F.6-7	FOIA-2019-00007-A	2/6/19*	Response Received

*FOIA response incorrectly dated 2/6/18 (should be 2/6/19)

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

September 14, 2018

FREEDOM OF INFORMATION ACT REQUEST

Via Email

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Accident No. ERA16LA195
Republic P-47D (N1345B)
May 27, 2016
New York, NY**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting certified copies of the following material relating to the Republic P-47D (N1345B) aircraft crash which occurred on May 27, 2016 near New York, NY:

- All recordings, notes, or other document concerning witness interviews;
- Maintenance records;
- Aircraft logbooks;
- Engine logbooks;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports";
- The Cessna Aircraft report of its investigation;
- All original field notes of NTSB Investigators;
- All original photos, photographs, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;

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THE WOLK LAW FIRM

AIRLAW

FOIA Request
Page 2

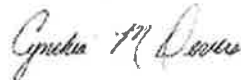
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- Surveillance videos;
- All communications with any person or party are part of this investigation;
- The complete investigation file for this accident; and
- All recordings, notes, photographs, videos, reports, or other documents or data concerning the aircraft wreckage and any examination of the aircraft.

In order to determine my status to assess fees, my fee category is: **all others**.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or cdevers@airlaw.com.

Preferred format is paper or electronic, whichever is more convenient for you. Thank you.

Very truly yours,



CYNTHIA M. DEVERS

CMD/sc

From: foia@ntsb.gov
To: Stacy Charles
Subject: Request Acknowledgement by NTSB
Date: Friday, September 14, 2018 1:43:21 PM

Dear Stacy Charles,

Case Number FOIA-2018-00469 has been assigned to the request you submitted with temporary case number [REQUEST_TEMPCASENUMBER].

In all future correspondence regarding this request please reference case number FOIA-2018-00469.

Regards,

NTSB

Total Control Panel

[Login](#)

To: scharles@airlaw.com
From: postmaster@ains-inc.com

Message Score: 70
My Spam Blocking Level: Custom

High (60): Fail
Medium (75):
Low (90):
Custom (82):

[Block](#) this sender
[Block](#) ains-inc.com

This message was delivered because the content filter score did not exceed your filter level.

THE WOLK LAW FIRM

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1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

December 5, 2018

FREEDOM OF INFORMATION ACT REQUEST

Via NTSB Website

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

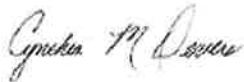
**Re: Accident No. ERA16LA195
Republic P-47D (N1345B)
May 27, 2016
New York, NY**

Please allow this letter to serve as an appeal from of our FOIA request No: 2018-00469. On September 14, 2018, my office submitted a FOIA request through the NTSB FOIA request portal concerning the NTSB's investigation of the accident which fatally injured William F. Gordon, III. (Ex. A). Since the time to respond to my FOIA request has passed, we have exhausted the administrative remedies and this appeal is timely.

Plaintiffs are prejudiced by the lack of response to this request because the information gathered during the investigation, that did not necessarily make its way into the public docket may not be available elsewhere and is important evidence in our investigation. For example, hundreds of photographs, notes, witness statements, documents, recordings, videos, records, and communications about the investigation may exist. This information is further important for the furtherance of public safety.

It is for these reasons that I submit this appeal.

Very truly yours,



CYNTHIA M. DEVERS

CMD/sc

Our practice is limited to aircraft accident litigation for plaintiffs.

From: foia@ntsb.gov
To: [Stacy Charles](#)
Subject: Request Acknowledgement by NTSB
Date: Wednesday, December 05, 2018 3:23:18 PM

Dear Stacy Charles,

Request Number FOIA-2019-00007-A has been assigned to the request you submitted via the NTSB FOIA Portal.

In all future correspondence regarding this request please reference case number FOIA-2019-00007-A.

Regards,

NTSB

Total Control Panel

[Login](#)

To: scharles@airlaw.com
From: postmaster@ains-inc.com

Message Score: 1
My Spam Blocking Level: Custom

High (60):
Medium (75):
Low (90):
Custom (82):

[Block](#) this sender
[Block](#) [ains-inc.com](#)

This message was delivered because the content filter score did not exceed your filter level.



National Transportation Safety Board

Washington, DC 20594 | www.nts.gov
OFFICE OF THE MANAGING DIRECTOR

February 6, 2018

Cynthia M. Deavers, Esq.
The Wolk Law Firm
1701-12 Locust Street
Philadelphia, PA 19103

Re: National Transportation Safety Board (NTSB)
FOIA Appeal 2019-00007-A
FOIA Request 2018-00469

Dear Ms. Deavers:

The NTSB has reviewed your FOIA appeal, in which you state that the agency has not yet processed your FOIA request for 20 categories of agency records related to Republic P-47D (N134B) aircraft crash near New York, NY. Your request is in the agency's first-in, first-out queue for processing.

The FOIA provides that an agency shall make an initial determination as to whether to release a record "within 20 days (excepting Saturdays, Sundays, and legal public holidays)" after receiving a request. 5 U.S.C. § 552(a)(6)(A)(i). The 20-working-day time limit may be extended if the agency can show that "exceptional circumstances" exist and that it has exercised due diligence in processing the request. *Id.* § 552(a)(6)(C).

In *Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976), the D.C. Circuit held that "exceptional circumstances" exist when an agency "is deluged with a volume of requests for information vastly in excess of that anticipated by Congress, when the existing resources are inadequate to deal with the volume of such requests within the time limits . . . and when the agency can show it 'is exercising due diligence' in processing the requests." The court further indicated that "the good faith effort and due diligence of the agency to comply with [FOIA requests] in as short a time as possible by assigning all requests on a *first-in, first-out basis* . . . is in compliance with the [FOIA]." *Id.*

Exceptional circumstances exist here. The NTSB investigates many accidents that garner public attention. The agency receives hundreds of FOIA requests each year for a substantial amount of records related to accident investigations. The agency has experienced an increase in the number of FOIA requests that it receives each year. Furthermore, most NTSB employees, including those processing FOIA requests, were furloughed during the recent government shutdown.

The FOIA expressly authorizes agencies to promulgate regulations providing for "multitrack processing" of their FOIA requests. 5 U.S.C. § 552(a)(6)(D)(i). The

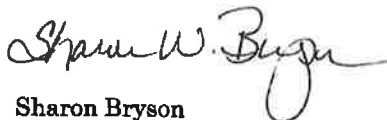
"multitrack processing" system allows agencies to process requests on a first-in, first-out basis within each track, and permits agencies to respond to relatively simple requests more quickly than requests involving complete and/or voluminous records.

The NTSB is processing your request for any and all records within 20 broad categories in accordance with established policies that allow for the equitable and orderly processing of FOIA requests on a first-in, first-out basis. You have not demonstrated a compelling need for expedited processing. *Id.* § 801.20(a)-(b). The agency will continue its search for responsive records and will review each page to determine whether any of the nine FOIA exemptions apply.

Once the agency has completed its search and reviewed all responsive records, the agency will inform you of its decision in writing. This appeal will not impact your FOIA request's standing in the queue.

Pursuant to 5 U.S.C. § 552(a)(4)(B) and (6)(A), my decision is reviewable in the district court of the United States.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon W. Bryson".

Sharon Bryson
Managing Director

EXHIBIT “G”

HINKLE
NTSB No. ERA15LA062
D/A November 28, 2014
Location: South Hampton, SC

Page Number	Request	Date	Action
G.1-2	NTSB Investigation File	7/22/16	Initial Request
G.3	FOIA 2016-00356	7/22/16	Acknowledged/Assigned Number
G.4-13	Appeal	1/20/17	Submitted
G.14	2017-00020-A	4/21/17	Acknowledged/Assigned Number

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

July 22, 2016

FREEDOM OF INFORMATION ACT REQUEST

Via Email

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Robert & Brenda Hinkle
Cirrus SR22T, N227RR
Location: Hampton, South Carolina
Date of Accident: November 28, 2014
NTSB I.D. No. ERA15LA062**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above captioned crash, NTSB ID No. ERA15LA062:

- All original field notes of NTSB Investigators;
- All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."

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NTSB
July 22, 2016
Page Two

- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All videos, including but not limited to, surveillance footage;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage; and
- The complete investigation file of Investigator, Timothy W. Monville, including but not limited to notes, photographs and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: all others.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or mmiska@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,



MICHAEL S. MISKA

MSM/vg

From: foia@ntsb.gov
To: Vicki Greco
Subject: Request Acknowledgement by NTSB
Date: Friday, July 22, 2016 10:37:55 AM

Dear Victoria Greco,

Case Number FOIA-2016-00356 has been assigned to the request you submitted with temporary case number [REQUEST TEMPCASENUMBER]. In all future correspondence regarding this request please reference case number FOIA-2016-00356.

Regards,
NTSB

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

January 20, 2017

VIA EMAIL

National Transportation Safety Board
Attention: Chief FOIA Officer, Angel Santa
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: APPEAL – FOIA 2016-00356
Robert and Brenda Hinkle
Dawn/Michael Skinner
NTSB ID No. ERA15LA062

Dear Mr. Santa:

Please allow this letter to serve as my appeal from a denial of my FOIA request No. 2016-00356. On July 22, 2016, I submitted my FOIA concerning the NTSB's investigation of the accident which injured Robert Hinkle, Brenda Hinkle, Dawn Skinner and Michael Skinner. (Ex. A). On July 22, 2016, I received the NTSB's acknowledgment of my submission. (Ex. B). From that date until the date of this appeal, I have periodically checked the status of my submission through the NTSB FOIA portal, and at all times the status of my request has been identified as "in process". (Ex. C).

Since the time to respond to my FOIA request had passed, I have exhausted my administrative remedies and this appeal is timely.

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

AIRLAW

National Transportation Safety Board
January 20, 2017
Page 2

The Hinkle and Skinner families are prejudiced by the lack of response to this request because the information gathered during the investigation, that did not necessarily make its way into the public docket may not be available elsewhere and is important evidence in our investigation. For example, hundreds of photographs, notes, witness statements, documents, recordings, videos, records, and communications about the investigation may exist. This information is not only important for the Hinkle and Skinner families; it is important for the furtherance of public safety.

It is for these reasons that I appeal the denial of my FOIA request.

Very truly yours,



MICHAEL S. MISKA

MSM/vg

W/attachments: Exs. A, B and C

Our practice is limited to aircraft accident litigation for plaintiffs.

EXHIBIT “A”

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

July 22, 2016

FREEDOM OF INFORMATION ACT REQUEST

Via Email

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Robert & Brenda Hinkle
Cirrus SR22T, N227RR
Location: Hampton, South Carolina
Date of Accident: November 28, 2014
NTSB I.D. No. ERA15LA062**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above captioned crash, NTSB ID No. ERA15LA062:

- All original field notes of NTSB Investigators;
- All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."

Our practice is limited to aircraft accident litigation for plaintiffs.



NTSB
July 22, 2016
Page Two

- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All videos, including but not limited to, surveillance footage;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage; and
- The complete investigation file of Investigator, Timothy W. Monville, including but not limited to notes, photographs and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: all others.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or mmiska@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Miska", with a horizontal line extending to the right.

MICHAEL S. MISKA

MSM/vg

EXHIBIT “B”

From: foia@ntsb.gov
To: [Vicki Greco](#)
Subject: Request Acknowledgement by NTSB
Date: Friday, July 22, 2016 10:37:55 AM

Dear Victoria Greco,

Case Number FOIA-2016-00356 has been assigned to the request you submitted with temporary case number [REQUEST TEMPCASENUMBER]. In all future correspondence regarding this request please reference case number FOIA-2016-00356.

Regards,
NTSB

EXHIBIT “C”

[Home](#)[Sign In](#)
[FOIA Request](#)
[Status](#)[Main FOIA](#)
[Page](#)[JAWS](#)
[Instructions](#)

Request Status

Please complete all the required fields marked with an asterisk (*).

* Case Number:

* Last Name:

Request Number	Received Date	Request Status
FOIA-2016-00356	07/22/2016	In Process

Note: Case Number must be entered exactly as provided. Example FOIA-2006-00001

From: foia@ntsb.gov
To: [Vicki Greco](#)
Subject: Request Acknowledgement by NTSB
Date: Friday, April 21, 2017 12:01:38 PM

Dear Victoria Greco,

Case Number FOIA-2017-00020-A has been assigned to the request you submitted with temporary case number [REQUEST_TEMP_CASENUMBER]. In all future correspondence regarding this request please reference case number FOIA-2017-00020-A.

Regards,
NTSB

EXHIBIT “H”

**McCALL
NTSB No. ERA15FA170
D/A March 29, 2015
Location: Orange, VA**

Page Number	Request	Date	Action
H.1-2	NTSB Investigation File	7/20/16	Initial Request
H.3	FOIA 2016-00346	7/20/16	Acknowledged/Assigned Number
H.4-12	Appeal	10/18/16	Submitted
H.13-22	Appeal	1/18/17	Submitted
H.23	FOIA 2017-00017-A	4/21/17	Acknowledged/Assigned Number
H.24	FOIA 2017-00017-A	8/7/17	Closed

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

July 20, 2016

FREEDOM OF INFORMATION ACT REQUEST

Via Email

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: Estate of Ryan Lee McCall
Aircraft: Piper PA-28-140
Location: Orange, Virginia
Date of Accident: March 29, 2015
NTSB ID NO. ERA15FA170

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above captioned crash, NTSB ID No. ERA15FA170:

- All original field notes of NTSB Investigators;
- All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

AIRLAW

NTSB
July 20, 2016
Page Two

- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage;
- Any and all videos and/or video surveillance;
- All log books, including but not limited to, aircraft, pilot, maintenance, engine, etc. and
- The complete investigation file of Investigator, Allison N. Diaz, including but not limited to notes, photographs and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: all others.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or mmiska@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you.
Thank you.

Very truly yours,



MICHAEL S. MISKA

MSM/vg

Our practice is limited to aircraft accident litigation for plaintiffs.

From: foia@ntsb.gov
To: [Vicki Greco](#)
Subject: Request Acknowledgement by NTSB
Date: Wednesday, July 20, 2016 10:18:34 AM

Dear Victoria Greco,

Case Number FOIA-2016-00346 has been assigned to the request you submitted with temporary case number [REQUEST TEMPCASENUMBER]. In all future correspondence regarding this request please reference case number FOIA-2016-00346.

Regards,
NTSB

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Sioll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

October 18, 2016

VIA EMAIL

National Transportation Safety Board
Attention: Chief FOIA Officer, Angel Santa
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: APPEAL – FOIA 2016-00346
Estate of Ryan Lee McCall
NTSB ID No. ERA15FA170

Dear Mr. Santa:

Please allow this letter to serve as my appeal from a denial of my FOIA request No. 2016-00346. On July 20, 2016, I submitted my FOIA concerning the NTSB's investigation of the accident which fatally injured Ryan Lee McCall. (Ex. A). On July 20, 2016, I received the NTSB's acknowledgment of my submission. (Ex. B). From that date until the date of this appeal, I have periodically checked the status of my submission through the NTSB FOIA portal, and at all times the status of my request has been identified as "in process". (Ex. C).

Since the time to respond to my FOIA request had passed, I have exhausted my administrative remedies and this appeal is timely.

The family of Ryan Lee McCall are prejudiced by the lack of response to this request because the information gathered during the investigation, that did not necessarily make its way into the public docket may not be available elsewhere and is important evidence in our investigation. For example, hundreds of photographs, notes, witness statements, documents, recordings, videos, records, and communications about the investigation may exist. This information is not only important for the McCall family; it is important for the furtherance of public safety.

Our practice is limited to aircraft accident litigation for plaintiffs.



National Transportation Safety Board
January 19, 2017
Page 2

It is for these reasons that I appeal the denial of my FOIA request.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Miska", with a long horizontal flourish extending to the right.

MICHAEL S. MISKA

MSM/vg

W/attachments: Exs. A, B and C

Our practice is limited to aircraft accident litigation for plaintiffs.

EXHIBIT “A”

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

July 20, 2016

FREEDOM OF INFORMATION ACT REQUEST

Via Email

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: Estate of Ryan Lee McCall
Aircraft: Piper PA-28-140
Location: Orange, Virginia
Date of Accident: March 29, 2015
NTSB ID NO. ERA15FA170

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above captioned crash, NTSB ID No. ERA15FA170:

- All original field notes of NTSB Investigators;
- All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

AIRLAW

NTSB
July 20, 2016
Page Two

- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage;
- Any and all videos and/or video surveillance;
- All log books, including but not limited to, aircraft, pilot, maintenance, engine, etc. and
- The complete investigation file of Investigator, Allison N. Diaz, including but not limited to notes, photographs and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: all others.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or mmiska@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,



MICHAEL S. MISKA

MSM/vg

Our practice is limited to aircraft accident litigation for plaintiffs.

EXHIBIT “B”

From: foia@ntsb.gov
To: [Vicki Greco](#)
Subject: Request Acknowledgement by NTSB
Date: Wednesday, July 20, 2016 10:18:34 AM

Dear Victoria Greco,

Case Number FOIA-2016-00346 has been assigned to the request you submitted with temporary case number [REQUEST_TEMP_CASENUMBER]. In all future correspondence regarding this request please reference case number FOIA-2016-00346.

Regards,
NTSB

EXHIBIT “C”

Home Sign In FOIA Request Status Main FOIA Page JAWS Instructions	<h3>Request Status</h3> <p>Please complete all the required fields marked with an asterisk (*).</p> <p>* Case Number: <input type="text"/> <input type="button" value="Find"/></p> <p>* Last Name: <input type="text"/></p> <table><thead><tr><th>Request Number</th><th>Received Date</th><th>Request Status</th></tr></thead><tbody><tr><td>FOIA-2016-00346</td><td>07/20/2016</td><td>In Process</td></tr></tbody></table> <p>Note: Case Number must be entered exactly as provided. Example FOIA-2006-00001</p>	Request Number	Received Date	Request Status	FOIA-2016-00346	07/20/2016	In Process
Request Number	Received Date	Request Status					
FOIA-2016-00346	07/20/2016	In Process					

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THE WOLK LAW FIRM

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1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

October 18, 2016 (incorrectly dated - should read January 18, 2017)

VIA EMAIL

National Transportation Safety Board
Attention: Chief FOIA Officer, Angel Santa
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: APPEAL – FOIA 2016-00346
Estate of Ryan Lee McCall
NTSB ID No. ERA15FA170

Dear Mr. Santa:

Please allow this letter to serve as my appeal from a denial of my FOIA request No. 2016-00346. On July 20, 2016, I submitted my FOIA concerning the NTSB's investigation of the accident which fatally injured Ryan Lee McCall. (Ex. A). On July 20, 2016, I received the NTSB's acknowledgment of my submission. (Ex. B). From that date until the date of this appeal, I have periodically checked the status of my submission through the NTSB FOIA portal, and at all times the status of my request has been identified as "in process". (Ex. C).

Since the time to respond to my FOIA request had passed, I have exhausted my administrative remedies and this appeal is timely.

The family of Ryan Lee McCall are prejudiced by the lack of response to this request because the information gathered during the investigation, that did not necessarily make its way into the public docket may not be available elsewhere and is important evidence in our investigation. For example, hundreds of photographs, notes, witness statements, documents, recordings, videos, records, and communications about the investigation may exist. This information is not only important for the McCall family; it is important for the furtherance of public safety.

Our practice is limited to aircraft accident litigation for plaintiffs.



National Transportation Safety Board
January 19, 2017
Page 2

It is for these reasons that I appeal the denial of my FOIA request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Miska", with a long horizontal flourish extending to the right.

MICHAEL S. MISKA

MSM/vg

W/attachments: Exs. A, B and C

Our practice is limited to aircraft accident litigation for plaintiffs.

EXHIBIT “A”

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

July 20, 2016

FREEDOM OF INFORMATION ACT REQUEST

Via Email

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: Estate of Ryan Lee McCall
Aircraft: Piper PA-28-140
Location: Orange, Virginia
Date of Accident: March 29, 2015
NTSB ID NO. ERA15FA170**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above captioned crash, NTSB ID No. ERA15FA170:

- All original field notes of NTSB Investigators;
- All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

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NTSB
July 20, 2016
Page Two

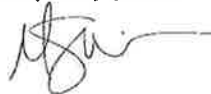
- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage;
- Any and all videos and/or video surveillance;
- All log books, including but not limited to, aircraft, pilot, maintenance, engine, etc. and
- The complete investigation file of Investigator, Allison N. Diaz, including but not limited to notes, photographs and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: all others.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or mmiska@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,



MICHAEL S. MISKA

MSM/vg

Our practice is limited to aircraft accident litigation for plaintiffs.

EXHIBIT “B”

From: foia@ntsb.gov
To: [Vicki Greco](#)
Subject: Request Acknowledgement by NTSB
Date: Wednesday, July 20, 2016 10:18:34 AM

Dear Victoria Greco,

Case Number FOIA-2016-00346 has been assigned to the request you submitted with temporary case number [REQUEST_TEMPCASENUMBER]. In all future correspondence regarding this request please reference case number FOIA-2016-00346.

Regards,
NTSB

EXHIBIT “C”

Home		
Sign In		
FOIA Request Status		
Main FOIA Page		
JAWS Instructions		

Request Status

*Please complete all the required fields marked with an asterisk (*).*

* Case Number:

* Last Name:

Request Number	Received Date	Request Status
FOIA-2016-00346	07/20/2016	In Process

Note: Case Number must be entered exactly as provided. Example FOIA-2006-00001

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Request Status

Please complete all the required fields marked with an asterisk (*).

Case Number*

FOIA-2016-00346

Last Name*

Greco

Find

Request Details

Request Number	Received Date	Request Status
FOIA-2016-00346	07/20/2016	In Process

Note: Case Number must be entered exactly as provided. Example FOIA-2006-00001

© 2016 AINS, Inc.

From: fola@ntsb.gov
To: Vicki Greco
Subject: Request Acknowledgement by NTSB
Date: Friday, April 21, 2017 12:01:27 PM

Dear Victoria Greco,

Case Number FOIA-2017-00017-A has been assigned to the request you submitted with temporary case number [REQUEST_TEMP_CASENUMBER]. In all future correspondence regarding this request please reference case number FOIA-2017-00017-A.

Regards,
NTSB

From: fola@ntsb.gov
To: [Vicki Greco](#)
Subject: Status Update for Request #"FOIA-2017-00017-A"
Date: Monday, August 07, 2017 7:56:59 AM

Dear Victoria Greco,

The status of your Appeal request #'FOIA-2017-00017-A' has been updated to the following status 'Closed'. To log into the PAL Application click on the Application URL below.

https://foiarequest.nts.gov:444/pal_ConfigMain.aspx

Sincerely,
NTSB

EXHIBIT “I”

**STUBBS
NTSB No. CEN15FA307
D/A July 18, 2015
Location: Cody, WY**

Page Number	Request	Date	Action
I.1-2	NTSB Investigation File	7/10/18	Initial Request
I.3-5	FOIA 2018-00374	7/20/18	Acknowledged/Assigned Number
I.6-8	Appeal	9/17/18	Submitted
I.9	FOIA 2019-00002-A	10/1/18	Acknowledged/Assigned Number

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

July 10, 2018

Freedom of Information Act Request

Via Online Request (www.foiarequest.nts.gov)
National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: Estates of Gerald and Diane Stubbs
Aircraft: Cessna T310R, N72TP
D/A: July 18, 2015
Location: Cody, WY
NTSB I.D. No. CEN15FA307

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above-captioned crash, NTSB ID No. CEN15FA307:

- All original field notes of NTSB Investigators;
- All original photographs, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparing of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."

Our practice is limited to aircraft accident litigation for plaintiffs.

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AIRLAW

Page 2

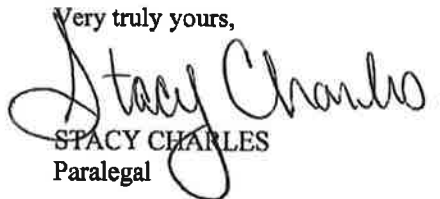
- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage; and
- The complete investigation file of Investigator in Charge, Thomas Little, and any additional participating investigators, including but not limited to notes, photographs, and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: ALL OTHERS.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or scharles@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,


STACY CHARLES
Paralegal

/sc



National Transportation Safety Board
Washington, D.C. 20594

July 20, 2018

Mrs. Stacy Charles
The Wolk Law Firm
1710 Locust Street
Philadelphia, PA 19103

Re: Freedom of Information Act (FOIA) Request
FOIA-2018-00374

Dear Mrs. Charles:

This acknowledges receipt of your FOIA request of July 11, 2018, requesting the following material relating to the above-captioned crash, NTSB ID No. CEN15FA307:

- All original field notes of NTSB Investigators;
- All original photographs, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, in any format, printed, digital, microfiche or photographic;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparing of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."
- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;

- All copies of NTSB requests for records, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All A TC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of A TC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage; and
- The complete investigation file of Investigator in Charge, Thomas Little, and any additional participating investigators, including but not limited to notes, photographs, and any other materials relating to this accident.

Your request will be processed in accordance with your inquiry. To track the status of your request go to the NTSB website and click FOIA Request on the main page. This will take you to the Public Access Link (PAL) Web Portal which provides a secure method of submitting requests and obtaining request status updates over the internet. Please refer to the FOIA number listed above exactly as it is to make your inquiry.

We are experiencing a backlog in processing FOIA requests and there may be a delay in processing your request. Requests for "any and all" records may add to the delay in the process as there may be voluminous documents to search/process. Please note, once the accident investigation is completed a public accident docket is made available on the NTSB website at <https://dms.nts.gov/pubdms/>. The public docket may contain factual reports, group chairman reports, and other records pertinent to the accident investigation.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the NTSB, FOIA Requester Service Center at (202) 314-6540. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS,

College Park, Maryland, 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

NTSB, FOIA Requester Service Center
490 L'Enfant Plaza, S.W.
Washington, D.C. 20594
(202) 314-6540

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

September 17, 2018

Freedom of Information Act Request - Appeal

Via Email

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: Estates of Gerald and Diane Stubbs
FOIA Request No. 2018-00374

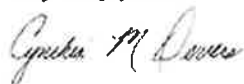
Dear Sir/Madam:

Please allow this letter to serve as an appeal from of our FOIA request No. 2018-00374. On July 10, 2018, my office submitted a FOIA request through the NTSB FOIA request portal concerning the NTSB's investigation of the accident which fatally injured Gerald and Diane Stubbs. (Ex. A). Since the time to respond to my FOIA request has passed, we have exhausted the administrative remedies and this appeal is timely.

Plaintiffs are prejudiced by the lack of response to this request because the information gathered during the investigation, that did not necessarily make its way into the public docket may not be available elsewhere and is important evidence in our investigation. For example, hundreds of photographs, notes, witness statements, documents, recordings, videos, records, and communications about the investigation may exist. This information is further important for the furtherance of public safety.

It is for these reasons that I submit this appeal.

Very truly yours,



CYNTHIA M. DEVERS

CMD/sc

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

AIRLAW

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Cynthia M. Devers
Michael S. Miska

July 10, 2018

Freedom of Information Act Request

Via Online Request (www.foiarequest.nts.gov)
National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: Estates of Gerald and Diane Stubbs
Aircraft: Cessna T310R, N72TP
D/A: July 18, 2015
Location: Cody, WY
NTSB I.D. No. CEN15FA307

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above-captioned crash, NTSB ID No. CEN15FA307:

- All original field notes of NTSB Investigators;
- All original photographs, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparing of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."

Our practice is limited to aircraft accident litigation for plaintiffs.

EXHIBIT

A

THE WOLK LAW FIRM

AIRLAW

Page 2

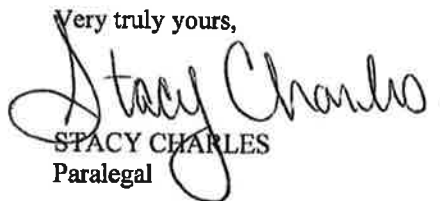
- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage; and
- The complete investigation file of Investigator in Charge, Thomas Little, and any additional participating investigators, including but not limited to notes, photographs, and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: ALL OTHERS.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or scharles@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,


STACY CHARLES
Paralegal

/sc

From: fola@ntsb.gov
To: [Stacy Charles](#)
Subject: Request Acknowledgement by NTSB
Date: Monday, October 01, 2018 2:27:05 PM

Dear Stacy Charles,

Request Number FOIA-2019-00002-A has been assigned to the request you submitted via the NTSB FOIA Portal.

In all future correspondence regarding this request please reference case number FOIA-2019-00002-A.

Regards,

NTSB

Total Control Panel

[Login](#)

To: scharles@airlaw.com	Message Score: 70	High (60): Fail
From: postmaster@ains-inc.com	My Spam Blocking Level: Custom	Medium (75):
		Low (90):
	Block this sender	Custom (82):
	Block ains-inc.com	

This message was delivered because the content filter score did not exceed your filter level.

EXHIBIT “J”

TORRES
NTSB No. WPR15FA163
D/A May 17, 2015
Location: Laughlin, NV

Page Number	Request	Date	Action
J.1-2	NTSB Investigation File	3/29/16	Initial Request
J.3	FOIA 2016-00227	4/4/16	Acknowledged/Assigned Number
J.4-6	FOIA 2016-00227	11/28/16	Denied
J.7-8	Appeal	1/17/17	Submitted



1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

March 29, 2016

FREEDOM OF INFORMATION ACT REQUEST

National Transportation Safety Board
Attention: FOIA Requester Service Center, CIO-40
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

**Re: My Client: Gregory Torres, Pilot
Aircraft: Rockwell Commander 114B, N4775W
Date of Accident: 5/17/15
Location: Laughlin, Nevada
NTSB I.D. WPR15FA163**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, and 49 CFR Part 7 *et seq.*, I am requesting the following material relating to the above captioned crash, NTSB ID No. WPR15FA163:

- All original field notes of NTSB Investigators;
- All original photos, recordings, sketches, notes, printed material carried away by investigators, such as aircraft books, charts, checklists, or other material found at the scene;
- All original records, reports, dispatch, maintenance records, manuals, certificates, histories, photographs, charts or recordings, *in any format, printed, digital, microfiche or photographic*;
- All original interview records, before summarization or re-recording;
- Signatory list of all participants as Party Members to the investigation;
- All notes of "Parties to Investigation" to all groups, submitted in preparation of the Safety Board's "preliminary, factual, technical, teardown or laboratory reports."

Our practice is limited to aircraft accident litigation for plaintiffs.

THE WOLK LAW FIRM

AIRLAW

NTSB-FOIA
March 29, 2016
Page Two

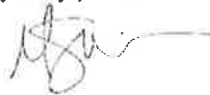
- Any and all transcripts or records, in original form, prior to translation, or summarization or editing, obtained by the NTSB;
- All copies of NTSB *requests for records*, recordings or other material from other government agencies, companies or organizations associated with the investigation;
- All dispatch and/or maintenance control logs or records of any facility conducting maintenance, repair, overhaul or exercising flight control or testing on the accident aircraft, received by any investigator;
- All ATC data, Radar recording, communications transcripts, obtained or in the possession of the government;
- All copies of ATC communication tapes (original re-recording), tower or TRACON, or ARTCC Center;
- All video footage obtained of accident and/or video surveillance cameras;
- All photographs documenting the wreckage, including the carburetors and fuel selector valves prior to removal of these components from the wreckage; and
- The complete investigation file of Investigator, Patrick H. Jones, including but not limited to notes, photographs and any other materials relating to this accident.

In order to determine my status to assess fees, my fee category is: all others.

The maximum dollar amount I am willing to pay for this request is \$250.00. Please contact me if the fees will exceed this amount at (215) 545-4220 or mmiska@airlaw.com.

Preferred format is paper or computer diskette/CD, whichever is more convenient for you. Thank you.

Very truly yours,



MICHAEL S. MISKA

MSM/vg



National Transportation Safety Board
Washington, D.C. 20594

April 4, 2016

Mr. Michael Miska
The Wolk Law Firm
1710-12 Locust Street
Philadelphia, PA 19103

Re: Freedom of Information Act (FOIA) Request
FOIA-2016-00227

Dear Mr. Miska:

This acknowledges receipt of your FOIA request of March 29, 2016, concerning an aviation accident that occurred on May 17, 2015, in Laughlin, Nevada.

Your request will be processed in accordance with your inquiry. To track the status of your request go to the NTSB website and click FOIA Request on the main page. This will take you to the Public Access Link (PAL) Web Portal which provides a secure method of submitting requests and obtaining request status updates over the internet. Please refer to the FOIA number listed above exactly as it is to make your inquiry.

NTSB, FOIA Requester Service Center
490 L'Enfant Plaza, S.W.
Washington, D.C. 20594
(202) 314-6540



National Transportation Safety Board
Washington, D.C. 20594

November 28, 2016

Mr. Michael Miska
The Wolk Law Firm
1710-12 Locust Street
Philadelphia, PA 19103

Re: National Transportation Safety Board (NTSB)
Freedom of Information Act (FOIA) No. FOIA-2016-00227
May 17, 2015, Laughlin, NV (WPR15FA163)

Dear Mr. Miska:

This is in response to your FOIA letter dated March 29, 2016, requesting all records regarding the above referenced accident investigation.

This investigation is currently ongoing. The Safety Board does not release records from pending investigations, because such release would impede the progress of the investigation and deter uninhibited deliberations and discussions regarding certain aspects of the investigation. As such, the Safety Board denies requests for records from pending investigations in accordance with Exemptions 5, and 7(A) of the FOIA, as explained below. Please note that, once the investigation is approaching conclusion, the Safety Board makes publicly available all information that was pertinent to each investigation in the form of a "public docket." This letter describes public dockets in detail, and provides instructions regarding how you can put your name and contact information on a list to receive the public docket information.

Congress has charged the Safety Board with investigating transportation accidents, determining the probable causes of the accidents, and issuing safety recommendations in order to prevent future accidents. 49 U.S.C. §§ 1131 (investigations) and 1135 (safety recommendations). Disclosure of records from a pending investigation would undermine the Safety Board's independence, objectivity, and effectiveness, which are critical to the Board's ability to investigate transportation accidents effectively. Preliminary records reflecting the Board's deliberative process are exempt from disclosure pursuant to Exemption 5 of the FOIA. See, e.g., *NLRB v. Sears, Roebuck & Co.*, 421 US 132, 148-51 (1975); *Ancient Coin Collectors Guild v. U.S. Dep't of State*, 2011 WL 1437419, *506 (D.C. Cir.) (citing *Wolfe v. Dep't of Health and Human Servs.*, 839 F.2d 768, 773 (D.C. Cir. 1988)(en banc)). The Safety Board cannot guarantee that preliminary materials, such as records from a pending investigation, would be accurate or complete; therefore, release of such information would result in confusion and compromise the Board's work. Similarly, material reflecting the Safety Board's deliberative process is exempt from disclosure in order to ensure the free flow of information during the course of the Board's investigations. *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977).

In addition, the FOIA does not require the Safety Board to release records when such release could interfere with the progress of an ongoing investigation. 5 U.S.C. § 552(b)(7)(A). At times, the Safety Board's investigations lead to other agencies' regulatory rulemaking. Courts have long recognized that the provisions of Exemption 7 apply to regulatory civil enforcement, not simply the enforcement of criminal statutes. See, e.g., Rugiero v. United States Dep't of Justice, 257 F.3d 534, 550 (6th Cir. 2001) (explaining that the "Court has adopted a per se rule" that applies not only to criminal enforcement actions, but to "records compiled for civil enforcement purposes as well"), cert. denied, 534 U.S. 1134 (2002); Rural Hous. Alliance v. United States Dep't of Agriculture, 498 F.2d 73, 81 & n.46 (D.C. Cir. 1974) (stating that "law enforcement purposes ... include both civil and criminal purposes"). Within this statutory framework, records from an ongoing Safety Board transportation investigation are exempt from disclosure under FOIA Exemption 7(A).

As mentioned above, at the conclusion of each investigation, the Safety Board makes investigative information available to the public in the form of "public dockets." These public dockets of information are voluminous and include all information that the investigators have deemed as pertinent to the investigation. In addition, when requesters seek all information from a specific investigation, the Safety Board's FOIA Office, in accordance with applicable case law, places such requests on a specific "track," and answers them on a first-in, first-out basis. Open Am. v. Watergate Special Prosecution Force, 547 F.2d 605, 614-616 (D.C. Cir. 1976). Therefore, the most efficient and timely way that requesters can receive information from an investigation is to place their names on a waiting list for receiving all information on the public docket for the particular investigation. I strongly recommend that you place your name on this list, and you will receive the information on the public docket once it becomes available.

The Safety Board's records facility, General Microfilm, Inc. (GMI), will record your name and contact information and, once the information in the public docket becomes available, GMI will send you all records from the public docket you seek for a fee. The contact information for General Microfilm, Inc. is as follows: 630 Files Cross Road, Martinsburg, West Virginia 25404, (304) 267-5830, <http://www.general-microfilm.com>. Public dockets are also available on the Safety Board's web site at <http://www.nts.gov/investigations/dms.html>.

In addition, with regard to aviation accident investigations, the Safety Board's public website also contains a database with information regarding most investigations. The public can use this database to determine the general status of an investigation, and obtain the preliminary, factual or probable cause report regarding the information from aviation investigations. You may search the aviation accident investigation database at <http://www.nts.gov/aviationquery/index.aspx>.

In summary, submitting a FOIA request is not the most expeditious way that you can receive the information you seek. Therefore, I recommend that you contact GMI and utilize the Safety Board's aviation accident database, as described above.

To the extent that I have denied your FOIA request, you may appeal my decision by writing to:
Mr. Thomas E. Zoeller, Managing Director, NTSB, 490 L'Enfant Plaza East, SW, Washington, DC
20594.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melba D. Moye". The signature is fluid and cursive, with the first name "Melba" being the most prominent part.

Melba D. Moye
FOIA Officer

THE WOLK LAW FIRM

1710-12 Locust Street
Philadelphia, PA 19103
215-545-4220 Fax 215-545-5252
E-mail: airlaw@airlaw.com
www.airlaw.com

Arthur Alan Wolk
Bradley J. Stoll
Cynthia M. Devers
Michael S. Miska
John J. Gagliano

January 18, 2017

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

APPEAL

Mr. Thomas Zoeller, Managing Director
National Transportation Safety Board
490 L'Enfant Plaza, S.W.
Washington, DC 20594-2000

Re: APPEAL - FOIA-2016-00227
May 17, 2015, Laughlin, NV
NTSB I.D. WPR15FA163

Dear Mr. Zoeller:

This letter is an appeal of the denial of the request listed above, which I am enclosing for your convenience.

I understand that it is the policy of the NTSB to discard or destroy information not released in the public docket at the conclusion of the investigation. The disclosure of this information is proper under FOIA after the conclusion of the investigation and its withholding does not meet the requirements of Exemption 5. Moreover, the participation of non-government parties to the investigation destroys any "inter-agency or intra-agency" protection that may have been afforded to many of these documents by Exemption 5.

While the denial of my request refers me to General Microfilm for the public docket, as explained above, my request was not limited to docket materials. For example, the docket may include only a handful of photographs of the accident scene, while hundreds of photographs are typically taken by investigators. I am specifically seeking more factual information than that which the investigator has "deemed as pertinent to the investigation" and included in the docket.

Our practice is limited to aircraft accident litigation for plaintiffs.



Mr. Thomas Zoeller
January 18, 2017
Page Two

It is for these reasons that I appeal the denial of the FOIA request listed above.

Very truly yours,

MICHAEL S. MISKA

MSM/vg

Enclosure